

HONORABLE ROBERT S. LASNIK

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AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CYBERSPACE.COM, LLC, et al,

Defendants.

Case No. C00-1806-L

FTC REPLY TO EISENBERG
DEFENDANTS'
OPPOSITION TO FTC
MOTION FOR SUMMARY
JUDGMENT

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
CV 00-01806 #00000175

FTC Reply to Eisenberg Defendants'
Opposition to FTC Motion for
Summary Judgment- C00-1806-L

Federal Trade Commission
600 Pennsylvania Ave , NW
Washington, DC 20580
202-326-3338 (Ms Guerard)

ORIGINAL

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I. INTRODUCTION.

The Federal Trade Commission's Motion for Summary Judgment ("FTC Motion") is divided into several sections that set forth what the FTC must prove to win summary judgment. The primary sections describe defendants' business practices (pp. 5-8), explain what representations defendants made and why their representations are deceptive under the FTC Act (pp. 8-11, 19-22), establish the individual defendants' control of and participation in defendants' business practices (pp. 11-13), show that the individual defendants knew that their solicitation checks were deceiving consumers nationwide (pp. 13-17), and set forth the amount of consumer injury (pp. 17-18).

The Eisenberg defendants' opening salvo in their Opposition to the FTC's Motion ("Eisenberg Opposition") is that the FTC should lose its Motion because it has submitted too much documentation.¹ Eisenberg argues that the breadth of the FTC's evidence alone suggests that there must be a genuine issue of material fact somewhere in the exhibits. Eisenberg uses the remainder of his Opposition to quibble with some of the evidence submitted by the FTC. In doing so, Eisenberg has failed to submit admissible evidence of his own that can establish a genuine issue of material fact in response to the FTC Motion. As a result, and as will be shown below, the FTC is entitled to summary judgment because, based on the evidence submitted, this Court can conclude, as a matter of law, that defendants' business practices were likely to deceive reasonable consumers and that these practices caused millions of dollars of injury to consumers.²

II. DEFENDANTS' BUSINESS PRACTICES, THE FTC ACT'S "DECEPTION" STANDARD, AND THE EVIDENCE PRESENTED.

A. *There Is No Genuine Dispute Concerning: 1) How And When Defendants Marketed Their Services, 2) How Many Checks Defendants Mailed To Consumers, Or 3) How Many Consumers Were Billed By Olympic On Behalf Of The EPV Subsidiaries.*

¹ Elsewhere, Eisenberg suggests that the FTC has not submitted enough documentation. See note 12, *infra*.

² The Eisenberg Opposition does not address three sections of the FTC Motion: jurisdiction, venue, and the individual defendants' control of, and participation in, defendants' business practices. The FTC's discussion of these sections is at pages 2-4 and 11-13 of its Motion. Accordingly, there is no genuine issue of material fact on these points.

1 Eisenberg does not present any evidence to dispute that Eisenberg and Hebard began their
 2 business venture in the fall of 1998 and modeled their offering based on solicitation checks used
 3 by a company that did business with defendant Olympic, a company owned and controlled by
 4 Eisenberg [Ex 260, *H Depo*, p 26, l. 3-10; Ex. 261, *O Depo*, p. 72, l. 24 - p. 74, l. 25; Ex 260, *H*
 5 *Depo*, p 24, l. 15-19; p. 27, l. 14-20; p. 28, l. 1-2]. Eisenberg agrees with the FTC that
 6 defendants' subsidiaries mailed over four million solicitation checks between the fall of 1998 and
 7 the summer of 2000 [Eisenberg Opp., p. 12; Vol. XII, Ex. 318, Olympic Interrogatory Response
 8 5]. Olympic recently stated that it billed 267,480 consumers on behalf of three of the four
 9 subsidiaries [Vol. XII, Ex. 318, Olympic Interrogatory Response 6].³ The Eisenberg Opposition
 10 does not raise a genuine issue of material fact regarding how and when defendants marketed their
 11 services, how many checks were mailed, or how many consumers Olympic billed on behalf of
 12 defendants.

13 **B. *Eisenberg's Opposition Does Not Raise A Genuine Dispute Concerning The***
 14 ***Representations On Olympic's Billing Page And By Defendants' Customer***
 15 ***Service Representatives That Consumers Were Obligated To Pay (Count I)***

16 In its Motion, the FTC presented examples of Olympic's billing page [Ex 268, p. CLS
 17 15018; Ex. 266, p. H 6634; Ex. 267, p. CJR 15208 (all in Vol V), Vol. VI, Ex 272, p. H 7828]
 18 to support its argument that the billing page represented to consumers that they were obligated to
 19 pay the charge presented on the bill page. The FTC also asserted that defendants' Customer
 20 Service Representatives ("CSRs") reiterated this representation [*See, e g*, Ex. 275, Epstein Dec,
 21 ¶ 8; Ex. 282, Hunter Dec, ¶ 7; Ex. 289, Rutkowski Dec, ¶ 7 (all in Vol. VI); Vol. V, Ex. 267,
 22 *Robrecht Depo*, p 21, l. 7 - p. 22, l. 1; p. 22, l. 9-15].

23 The Eisenberg Opposition does not dispute that Olympic's billing page represented to
 24 consumers that they were obligated to pay charges placed on consumers' telephone bills on
 25 behalf of the EPV subsidiaries or that defendants' CSRs told consumers who inquired about the
 26 Olympic charge that those consumers were obligated to pay this charge. In his own Summary

27 ³ The FTC had estimated that Olympic billed 257,000 consumers based on defendants' customer service
 28 database [FTC Motion, pp. 5-6]. The FTC is willing to accept this updated figure for the purpose of its Reply to the
 Eisenberg Opposition. Defendants' statement of billed consumers will be a subject explored at the FTC's upcoming
 deposition of Olympic

Judgment Motion, Eisenberg takes the position that "Once subscribers negotiated the check, Cyberspace⁴ was entirely within its rights to represent to subscribers that the subscriber was legally obligated to pay for those charges." [Eisenberg SJ Motion, p. 16, l. 15-17] Eisenberg takes issue with the FTC's consumer declarations supporting Count I [Eisenberg Opp., p. 4]. However, as shown at pp 5-7 *infra*, Eisenberg's attack on the consumer declarations is unpersuasive. Eisenberg has failed to present a genuine issue with respect to Count I.

C. *Eisenberg Does Not Dispute The Materiality Of Defendants' Representations To Consumers.*

The FTC has asserted that defendants' representations were material [FTC Motion, pp. 21-22] A showing that the representations that deceived consumers were material is a component of the FTC's burden under the "deception" standard of the FTC Act [FTC Motion, p. 19]. The FTC's Complaint alleges that defendants represented that consumers were obligated to pay defendants' charges; that defendants' solicitation check was a rebate, refund, or other payment based on a prior or ongoing business relationship; and that consumers could cash or deposit defendants' check. The Eisenberg Opposition does dispute that defendants made the alleged representations, but it does not disagree that, if the representations were made, or information was omitted, such representations or omissions were material. Accordingly, there is no genuine issue of material fact on this point.

D. *Eisenberg Does Not Present Any Usage Data To Counter The Data Submitted By The FTC.*

One basis for the FTC's assertion that defendants' checks were likely to deceive reasonable consumers is the usage data provided by Starnet, one of defendants' Internet Service Providers ("ISPs")⁵ Starnet's invoices reflected how many of the consumers billed by defendants logged on to the Internet using defendants' passwords [Vol. I, Ex. 4; Vol. V, Ex. 265, *Starnet Depo* (Malecki), p. 91, l. 23 - p. 92, l. 15]. The FTC has shown that the Starnet invoices

⁴ From the face of Eisenberg's summary judgment motion, it appears that he uses the term "Cyberspace" to refer either to all subsidiaries of defendants' venture or to the three subsidiaries that marketed Internet access

⁵ Eisenberg agrees that defendants switched from one ISP to another during the course of their business venture [Eisenberg Opp, p. 17], and he does not dispute that Starnet was defendants' ISP from June 1999 through the end of the venture in the fall of 2000 [Vol. XII, Ex. 262, *E Depo*, p. 164, l. 8-11]

are authenticated and admissible evidence of usage by consumers billed by defendants from June 1999 through October 2000 [FTC Opposition to Eisenberg SJ, p. 14, note 13] These invoices were authenticated by Starnet at its deposition,⁶ and they are admissible as business records based on testimony provided by Starnet's deposition representatives and by a declaration from one of these representatives.⁷ Defendants paid these invoices [Ex. 260, *H Depo*, p. 138, l. 19 - p. 139, l. 11]. Eisenberg has never provided any usage data of his own to rebut the Starnet data,⁸ and he has never introduced evidence to show that the Starnet invoices were inaccurate or incomplete. The Starnet invoices show that only about 2000 consumers who were being billed by defendants logged on [Vol. VI, Ex. 302, Tobin Dec, ¶¶ 34-35].

E. *The Eisenberg Defendants' References To The FTC's Pay-Per-Call Rule Are Irrelevant In An Action That Does Not Involve 900-Numbers.*

In an attempt to obfuscate the true issue in this case— whether consumers who thought defendants' check was a check rather than a contract were reasonable in their interpretation— Eisenberg injects an unrelated FTC Rule into his Opposition. Eisenberg borrows one sentence from one provision of the unrelated Pay-Per-Call Rule with the mistaken hope that this reference, without citation, will create a genuine issue about a material fact in this case [Eisenberg Opp., p. 24].⁹ Eisenberg suggests that defendants' fine-print disclosure cannot be deceptive if it may

⁶ The invoices are authenticated by both of Starnet's deposition representatives at Vol IX, Ex 264, *Starnet Depo* (Malecki), p 40, l 4-8, and *Starnet Depo* (Van Deren), p 35, l 3-5

⁷ Starnet employee Tom Van Deren establishes that the Starnet invoices are business records at Vol IX, Ex 264, *Starnet Depo* (Van Deren), p 35, l 3-21, and at Vol IX, Ex 312, Van Deren Dec, ¶¶ 2, 5-10

⁸ Neither does Eisenberg challenge two of three declarations submitted by the FTC from people with knowledge regarding typical monthly usage rates among consumers with Internet access. These declarations establish that the usage rate among people billed by defendants was dramatically lower than the norm. The Declaration of Gary Gardner, Executive Director of the Washington Association of Internet Service Providers, states that, based on an informal survey of 37 ISPs that are based in or operate in Washington State, the number of consumers who sign up for Internet access yet do not use the service is less than one percent [Vol IX, Ex 313, Gardner Dec, ¶¶ 1-5]. The Declaration of Barbara Jarzab, Vice President and Chief of Measurement Science for NetRatings, which collects Internet usage information, states that services provided by her company reflect usage rates between 60.3 and 62.7 percent [Vol IX, Ex 316, Jarzab Dec, ¶¶ 1-3]

⁹ Eisenberg does not mention that the Pay-Per-Call Rule prohibits "any audio, video or print technique that is likely to detract significantly from the communication of the disclosures." 16 CFR § 308.3(a)(5).

1 satisfy the Pay-Per-Call Rule.¹⁰ Eisenberg's argument is unavailing. Defendants' fine-print
 2 disclosure that their check is also a contract violates the FTC Act because it was not clear and
 3 conspicuous. Eisenberg's reference to the unrelated Rule raises no genuine issue of material fact

4 **F. *Eisenberg's Attack On Consumer Declarations Is Overbroad And Inaccurate.***

5 The consumer declarations submitted by the FTC in support of its Motion show the wide
 6 variety of circumstances in which consumers received defendants' check as well as the
 7 consistency of consumers' interpretation of defendants' check. Eisenberg has argued that the
 8 consumers' declarations should not be considered in assessing the FTC's Motion. First,
 9 Eisenberg argues that none of the declarations is admissible because "the declarants are
 10 unavailable for trial." [Eisenberg Opp., p. 12, l 2-3]. There has been no showing that the
 11 consumer declarants are unavailable for trial. This argument for the exclusion of consumers'
 12 statements has no merit.

13 Second, Eisenberg proposes that the FTC added documents to consumers' declarations
 14 after they were signed [Eisenberg Opp., p. 11]. This is not accurate. As to several consumers,
 15 there can be no dispute that the documents attached to their declarations are simply copies of
 16 their telephone bills reflecting defendants' charge [See, e g , Vol. VI, Attachments to Exs. 273,
 17 279, 290]. In other cases, attachments include copies of complaint letters that consumers wrote
 18 to defendants or regulatory agencies to protest the Olympic charge [See, e g , Attachments to Vol
 19 VI, Exs. 270, 278, 298]. In some cases, consumers provided copies of their telephone bills and
 20 complaint letters to the FTC; in many other cases, the FTC received copies of these documents
 21 and other related correspondence from defendants in discovery, arranged for bates-stamping with
 22 either an "E" or "H" to designate which defendant produced which documents, and provided the
 23 bates-stamped copies to consumers the FTC contacted about their transactions with defendants,
 24 for their review [See, e g , Vol VI, Attachments to Exs. 271, 279, 290].¹¹

25
 26 ¹⁰ Moreover, support for the Eisenberg defendants' references to the Pay-Per-Call Rule comes in the form
 27 of an inadmissible hearsay statement attached to Eisenberg attorney Joel Dichter's declaration. Statements made five
 28 years ago at a public workshop affiliated with an unrelated Rule simply do not create a genuine issue as to any
 material fact in this case

¹¹ The FTC often contacted consumers whose complaints were produced from defendants' business
 premises, so that defendants could not later argue that they had not seen the complaints at issue

1 Third, Eisenberg notes that the consumers who were deposed or who submitted
 2 declarations in this matter were "hand-picked by the FTC." [Eisenberg Opp., p. 12, l. 12,
 3 emphasis omitted] This is a red herring.¹² Defendants produced boxes of consumer complaints
 4 from their files. The FTC bates-stamped and copied all documents in defendants' files relating to
 5 a complaining consumer. The FTC provided copies of the bates-stamped documents to
 6 consumers for them to review in preparing their declarations

7 Fourth, Eisenberg argues that the declarations are inadmissible for their truth [Eisenberg
 8 Opp., p. 12]. There are two bases to support admission of these consumer declarations First,
 9 they are admissible under Federal Rule of Evidence 807 because they have circumstantial
 10 guarantees of trustworthiness, they are offered as evidence of material facts, they are more
 11 probative than other evidence, and the interests of justice will be served by their admission This
 12 is so because they are sworn statements that reveal a variety of experiences with common
 13 elements. There is no better evidence of consumers' interpretation of defendants' checks than
 14 sworn statements from consumers themselves The interests of justice are served by accepting
 15 consumers' statements of their experiences The consumer declarations are also admissible to
 16 show that defendants had notice that consumers were reporting that they had considered
 17 defendants' check to be merely a check without any fine-print contractual consequences.

18 The FTC is submitting declarations and depositions of consumers to establish the
 19 likelihood of deception caused by defendants' checks and the reasonableness of consumers who
 20 were deceived. The declarations and depositions reveal the wide variety in the circumstances
 21 under which consumers signed or stamped defendants' checks, and the consistency in how
 22 consumers interpreted defendants' checks. Consumers thought defendants' check was a check¹³,
 23

24
 25 ¹² Eisenberg's proposal that the FTC has submitted too few declarations and depositions is similarly
 26 unavailing There is no particular threshold number of injured consumers that the FTC must produce to prevail in
 27 showing that defendants' business practices were deceptive

28 ¹³ Consumers from California to Pennsylvania to Florida reported the same interpretation of defendants'
 check that it was a check [Ex 271, Addor Dec, ¶ 3, Ex 270, Achey Dec, ¶ 3, Ex. 295, R. Wood Dec, ¶¶ 2, 7, 8 (all
 in Vol VI)] Consumers from the ages of 42 to 79 reported that they interpreted defendants' check as a check [Vol
 VI, Ex 284, Katz Dec, ¶ 6, Vol. VI, Ex 275, Epstein Dec, ¶¶ 3, 9]. Consumers who received the check at home and
 employees of a business that receives 12-15 checks daily interpreted defendants' check as a check [Vol VI, Ex 280,
 Hicks Dec, ¶¶ 3, 5, Vol VI, Ex 274, Davis Dec, ¶¶ 3, 9]

1 they did not think the check was a contract. Consumers did not see the fine print on the back of
 2 the check. The combination of variety in circumstances and consistency in interpretation is
 3 submitted to show that consumers who were deceived were reasonable in their interpretation.

4 Eisenberg attacks consumers' declarations and depositions as being insufficient in
 5 number. However, these consumers are illustrative of consumers' interpretations. Moreover,
 6 this attack on the sufficiency does not create a genuine issue regarding a material fact.

7 **G. *Other Evidence Corroborates Don Reese's Testimony.***

8 In his Opposition, Eisenberg accuses Don Reese of perjury [Eisenberg Opp., p. 5]. The
 9 basis for this accusation, according to a footnote, is that Mr. Reese denied being an officer of
 10 several of Eisenberg's companies. After Mr. Reese's deposition, Eisenberg submitted documents
 11 with his summary judgment motion purporting to show that Mr. Reese was a corporate officer in
 12 more companies than he recalled at his deposition. Based in part on this purported discrepancy,
 13 the Eisenberg defendants posit that Mr. Reese cannot be trusted. Moreover, testimony from Lisa
 14 Yagelowich, who still works for Eisenberg, shows that she was also named as a corporate officer
 15 of Eisenberg's companies more often than she could recall or knew about [Vol. XII, Ex. 263,
 16 *Yagelowich Depo*, p. 30, l. 7 - p. 40, l. 14; p. 47, l. 10 - p. 48, l. 14, p. 53, l. 4 - p. 54, l. 6].¹⁴

17 Eisenberg's attacks on Mr. Reese are undermined by the fact that testimony from
 18 defendants and third parties, documents, and consumer declarations and depositions regarding
 19 defendants' business practices corroborate his testimony. Moreover, the purported ill-will
 20 between Mr. Eisenberg and Mr. Reese, which apparently manifested itself in April 2001 as
 21 described in the Eisenberg Opposition, certainly cannot taint emails Mr. Reese sent to
 22 participants in defendants' business venture prior to that time. Eisenberg's attack on Mr. Reese's
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 24
 25
 26

27 ¹⁴ The FTC is not accusing Ms. Yagelowich of perjuring herself on this point; her deposition excerpts are
 28 offered to show the defendants' corporate officers did not necessarily know that they were officers or employees of
 Eisenberg companies. Ms. Yagelowich did concede at her deposition that at the time she signed a sworn affidavit
 filed in Court stating that she was an employee of French Dreams, she was not in fact a French Dreams employee
 [Vol. XII, Ex. 319, p. 19, l. 2 - p. 21, l. 20].

1 testimony does not create a genuine issue about a material fact because other evidence
2 corroborates his testimony.¹⁵

3 **III. THE REASONABLE CONSUMER.**

4 All parties to this litigation appear to agree that the proper analysis of “deceptive”
5 business practices under the FTC Act applies a “reasonable consumer” standard.¹⁶ Determining
6 whether consumers were “reasonable” in their interpretation of defendants’ checks and billing
7 page is a matter of law, not a matter of fact, for the Court. The FTC has presented evidence that
8 consumers nationwide, young and old, were deceived by defendants’ check, and were injured as
9 a result. As established by the FTC, among the consumers who were deceived and injured by
10 defendants were individuals who had no computer or already had Internet access and therefore
11 had no use for defendants’ services, individuals who signed defendants’ check because they
12 thought it was a refund or rebate requested from another company, small businesses who stamp
13 and deposit every incoming check as a matter of company policy, and small businesses who
14 thought defendants’ check was a payment from a customer [FTC Motion, pp. 9-10]. In other
15 cases, defendants billed small businesses who simply did not realize that a check for \$3.50
16 received in the mail might turn out to be a contract [See, e.g., Vol. VI, Ex. 273, Clifton Dec, ¶ 6,
17 Vol. VI, Ex. 275, Epstein Dec, ¶ 6].

18 To support its assertion that defendants’ business practices deceived reasonable
19 consumers, the FTC has shown that of the 248,878 consumers billed by Olympic for defendants’
20 Internet service¹⁷, approximately 99% of those consumers never used the service that defendants
21

22
23 ¹⁵ The Eisenberg Opposition’s suggestion that Mr. Reese was motivated by a desire to avoid being named
24 in the FTC’s action is unpersuasive. The FTC did not name any employee or officer other than the two individuals
25 who owned and controlled defendants’ business. Thus, the FTC did not name John Biddinger, Lia Yagelowich, or
26 John Gravenkamper.

27 ¹⁶ However, despite clarification regarding the FTC Act’s “deception” standard provided by the FTC in its
28 Opposition to the Eisenberg SJ motion, Eisenberg persists in arguing for an incorrect legal standard by referencing
what consumers could do to “reasonably avoid harm” caused by defendants’ business practices [Eisenberg Opp., p.
25]. A showing that the harm be “reasonably avoidable” is not a part of the legal analysis in a deception case.

¹⁷ This number represents the total number of consumers billed by Olympic, as stated in its Interrogatory
Response, less the number of consumers billed on behalf of Essex, which did not offer Internet service. Splashnet
customers were billed by IntegreTel.

1 billed them for [FTC Motion, pp. 7-8]. The FTC has shown that defendants never included a
 2 disclosure on the front of their solicitation check explaining that their check was actually a
 3 contract [Vol XII, Ex. 260, *H Depo*, p 125, l 1-23; p. 126, l. 6-8]. The FTC has shown that
 4 defendants' CSRs told consumers they were obligated to pay defendants' charges [FTC Motion,
 5 p 9]. The FTC has shown that some consumers who signed defendants' check did so because
 6 they thought it was a refund, rebate, or other payment from a prior or ongoing business
 7 relationship [FTC Motion, p. 10]. The FTC has shown that some of the consumers who signed
 8 or stamped defendants' check did so because they thought the check was simply a check [FTC
 9 Motion, p. 9] On the basis of this factual proof, the Court can conclude, as a matter of law, that
 10 consumers who signed or stamped defendants' checks without realizing that defendants had
 11 inserted a contract in fine print on the back of their checks were reasonable in their interpretation.

12 To rebut the FTC's factual proof that reasonable consumers were deceived by defendants'
 13 business practices, the Eisenberg Opposition relies on two arguments: that some of the FTC's
 14 evidence is inadmissible, and that the approximately 267,000 consumers who signed or stamped
 15 defendants' checks either were unreasonable for failing to notice the fine-print contract on the
 16 back of the checks or were reasonable for agreeing to pay for a service that they did not use,
 17 want, or need.¹⁸ The FTC has already shown that its evidence is admissible. On the latter point,
 18 Eisenberg's argument that most of the 267,000 consumers who signed or stamped defendants'
 19 check without considering the fine print terms were unreasonable is unpersuasive. Eisenberg's
 20 alternate argument that most of the 267,000 consumers who signed or stamped defendants' check
 21 with awareness of the contractual consequences and did not use defendants' services were
 22 reasonable is baseless and unpersuasive.

23 As in all "deception" cases brought by the FTC, in this case, the Court ultimately must
 24 determine whether consumers were reasonable in their interpretation of defendants'
 25 representations. In this case, consumers interpreted defendants' check as a valid check.
 26 Consumers did not interpret defendants' check as a contract. To support the reasonableness of
 27

28 ¹⁸ In his Opposition, Eisenberg abandons the speculation in Eisenberg's Affidavit in support of summary judgment that some consumers might pay defendants for an "@cyberspace.com" email address

1 this interpretation, the FTC has submitted evidence that includes samples of the check itself,
 2 consumers' statements regarding their interpretation of the check, and statements from
 3 defendants regarding consumers' interpretation that the check was simply a check. To counter
 4 the reasonableness of this interpretation, Eisenberg challenges the admissibility of some of the
 5 FTC's evidence. Because the reasonableness of consumers' interpretation is a matter of law and
 6 because Eisenberg has failed to show that there is a genuine issue for trial, the Court should
 7 conclude that consumers' interpretation of defendants' check was reasonable.

8 **IV. NOTICE**

9 The Eisenberg Opposition claims that there is no admissible evidence that Eisenberg
 10 knew of defendants' deceptive business practices. In making this argument, Eisenberg relies on
 11 his own declaration in which he states that he did in fact listen to his CSRs respond to consumer
 12 complaint calls on fewer than ten occasions. Eisenberg has admitted to having actual notice of at
 13 least some consumer complaints (submitted by telephone and email) regarding the EPV
 14 subsidiaries [Vol. IV, Ex. 261, *O Depo*, p. 170, l. 14-18, p. 171, l. 4-8; Ex. 262, *E Depo*, p. 108,
 15 l. 8 - p. 110, l. 1; Vol. II, Ex. 154]. Moreover, Eisenberg controls the business practices of
 16 defendant Olympic, the primary recipient of telephonic consumer complaints [Vol. III, Ex. 256,
 17 Eisenberg Adm 24]. Eisenberg spent five days a week, eight to nine hours per day working in
 18 the same building as Olympic [Vol. IV, Ex. 262, *E Depo*, p. 34, l. 20 - p. 35, l. 3]. Eisenberg
 19 quibbles with the FTC's portrayal of the eight state investigations of defendants' business
 20 practices, but he does not deny that he knew of these investigations, including the Wisconsin
 21 investigation, which concluded that EPV, Essex, and Cyberspace violated Wisconsin trade
 22 practice law [Vol. II, Ex. 86].

23 **V. INJURY**

24 In its Motion, the FTC showed that unreimbursed consumer injury caused by defendants'
 25 deceptive business practices totaled \$23,225,500. The FTC arrived at this determination by
 26 relying exclusively on defendants' own data [Vol. VI, Ex. 302, Tobin Dec, ¶¶ 2-6, 16, 20-32]¹⁹

27
 28 ¹⁹ Eisenberg challenges the FTC's determination of consumer injury by arguing that FTC staff lacked the
 "formal training" to calculate totals from data contained in defendants' customer service database and that FTC staff
 could not analyze the database as it was used by defendants. No formal training is needed to add and subtract billing

Subsequent to the filing of the FTC's Motion, defendant Olympic responded to FTC Interrogatories that sought information about, *inter alia*, consumer injury. Based on this new information, the FTC has revised its determination of consumer injury, again by relying exclusively on defendants' data. The unreimbursed consumer injury in this case now totals \$24,208,235.92. The FTC arrived at this figure by totaling the amount billed by Olympic and subtracting the amounts provided to consumers in credits and refund checks and subtracting the amount in solicitation checks cashed or deposited by consumers²⁰

Eisenberg contends that the \$1.2 million profit that the FTC has traced to him "was more than consumed by expenses," and he suggests that he used the \$1.2 million to pay the costs of specifically-listed employees who worked on the EPV venture [Eisenberg Opp., pp. 21-22]. Defendants' own records show that Cyberspace reimbursed Eisenberg for the salaries of his listed employees when they worked for the EPV venture [Vol. XII, Ex. 317, Crowley Dec, ¶¶ 6-9]. Cyberspace paid Lia Yagelowich \$15,000 for whatever she did as president of Cyberspace. [Vol. XII, Ex. 317, ¶ 10].

More importantly, Eisenberg's attempt to reduce his profits to a figure less than zero is irrelevant. As described above and in its Motion, the FTC has determined that defendants' business practices caused over \$24 million in consumer injury. Eisenberg's Opposition does not provide evidence to dispute this determination, although it does make unsupported references to chargebacks and bad debt. The FTC has shown that Eisenberg had notice of defendants' deceptive practices, so he will be personally liable for this judgment amount. This true regardless of how much Eisenberg did or did not receive in personal profits.

data provided by defendants, nor is it necessary to use defendants' database as they used it to calculate consumer injury

²⁰ Olympic billed \$29,318,038.39. Consumers received \$3,091,302.47 in credits and \$1,119,000 in refund checks. Consumers received \$899,500 by cashing defendants' checks. Total unreimbursed injury therefore totals \$24,208,235.92.

1 **VI. CONCLUSION.**

2 For the foregoing reasons, as set forth in this Reply to the Eisenberg defendants'
3 Opposition to the FTC Motion for Summary Judgment, and supporting exhibits, the Commission
4 requests that the Court grant summary judgment against all defendants and in favor of the FTC.

5
6 Dated: *April 16, 2002* *J. Durham for CG*

7 Collot Guerard
8 Michael Goodman
9 Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
202-326-3338 (Ms. Guerard)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of April, 2002, a copy of FTC Reply to Eisenberg Defendants' Opposition to FTC Motion for Summary Judgment was served via overnight delivery service, postage prepaid, upon the parties listed below:

Ernest Leonard, Esq.
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Klein, Zelman
485 Madison Avenue, 15th Floor
New York, New York 10022


Michael Goodman
Attorney for Plaintiff

DECLARATION OF JOHN A. CROWLEY
PURSUANT TO 28 U.S.C. § 1746

1
2
3 1. My name is John A. Crowley. I am employed by the Federal Trade
4 Commission in Washington, D.C. as a Senior Attorney. In addition to my law
5 degree, I have a B.S. in Accounting and worked as an accountant for
6 approximately ten years. As part of my duties and responsibilities for the Federal
7 Trade Commission, Bureau of Consumer Protection, I provide forensic accounting
8 assistance to trial attorneys and investigators and have done so for more than 20
9 years. I have testified in Federal court both as a fact witness and on some
10 occasions as an expert.
11
12
13

14 2. I have previously submitted a declaration in support of the FTC's
15 Motion for Summary Judgement. My declaration is Exhibit 300 in Volume 6.
16

17 3. Commission staff provided me with a copy of a document dated April
18 10, 2002 entitled Declaration of Ian Eisenberg in Opposition to Plaintiff's Motion
19 for Summary Judgement (Eisenberg Declaration).
20

21 4. Paragraphs 19, 20, 21 and 22 of the Eisenberg declaration contain
22 statements relating to the payment of indirect expenses and overhead items by the
23 by the "EFO defendants" which were not fully allocated to or reimbursed by the
24 "EPV" ventures.
25
26

27 5. Specifically, paragraph 20 contains a listing of "EFO" employees who
28

1 spent time on the "EPV" ventures. The paragraph implies that the time of these
2 persons was not included in the expense reimbursements received from the "EPV"
3 ventures.
4

5 6. I examined hard copies of documents received from John Keida, who
6 performed accounting work for Electronic Publishing Ventures, LLC ("EPV") and
7 the EPV subsidiaries. A number of true and correct copies of these documents are
8 attached to my declaration and are Bates stamped "JK." The FTC also received
9 copies of bank statements related to the venture from First Union Bank. These
10 documents are Bates stamped "FU." True and correct copies of relevant
11 documents are attached to my declaration.
12
13
14

15 7. My examination of the documents produced by Mr. Keida has
16 provided some materials which bear directly on the Eisenberg declaration
17 statements.
18

19 8. Documents contained in a folder produced by John Keida marked
20 "US Network Files" include copies of checks from Cyberspace.com, LLC to US
21 Network Services for services provided by the "EFO" defendants. One of the
22 attachments to the Cyberspace check payments is a detailed listing of charges for
23 "EFO" employee time devoted to Cyberspace activities. The summary sheets
24 contain a specific percentage of the employee time allocated to Cyberspace. The
25 employees listed bear the same first names and last initials as the employees listed
26
27
28

1 in paragraph 20 of the Eisenberg declaration. The supporting documents contain a
2 month-by-month analysis of wages for a number of months during the period from
3 January 1999 through June 2000. The analyses contain a listing of "Rate/Mo" for
4 each of the listed employees. Next to this amount is a percentage which is the
5 amount charged to Cyberspace on a monthly basis for the individual employees'
6 time. The percentages vary by employee and range from a high of 75% to a low of
7 5% (JK 729-736).

8
9
10
11 9. The analyses and allocations of employee time contained in JK 729-
12 736 and the accompanying Cyberspace payment checks lead me to conclude that,
13 contrary to the implication of paragraph 20 of the Eisenberg declaration, the time
14 spent by "EFO defendant" employees was allocated based on time spent on
15 Cyberspace matters and that Cyberspace did reimburse the "EFO" defendants for
16 their employees time.
17

18
19 10. Paragraph 20 of the Eisenberg declaration also states that Lia
20 Yagelowich devoted time to EPV-related work. However, Mr. Eisenberg does not
21 mention that Ms. Yagelowich received compensation from Cyberspace in the
22 amount of \$15,000.00 in the form of two \$7,500.00 checks (JK 737-740). The
23 files contain the original of one of these checks, number 1323. A copy of the front
24 and back of this check is included with this declaration (JK 741-742). The
25 documents provided by Mr. Keida do not contain a copy the second check, number
26
27
28

1 1342. However an examination of the First Union Bank statements reveals that
2 this check was negotiated on August 9, 1999 (FU16451-16454 at 16452).
3

4 11. My examination of the documents relating to Lia Yagelowich leads
5 me to conclude that Ms. Yagelowich did receive compensation from the EPV
6 defendants.
7

8 12. Additionally, the Eisenberg declaration does not provide any support
9 other than Mr. Eisenberg's assertions for his claim that expenses should be
10 deducted from the payments he received. To the contrary, the documents attached
11 to my declaration show that employee time was allocated to EPV matters
12 according to a definite pattern and that Cyberspace paid the "EFO" employees
13 who worked on Cyberspace matters.
14
15

16 10. It is my conclusion that the statements regarding unreimbursed
17 expenses in the Eisenberg declaration require additional examination and
18 documentation to determine the validity of the statements.
19
20

21 I declare under penalty of perjury that the foregoing statement is true and
22 correct.
23
24

25 Executed on April 15, 2002, at Washington, D.C.
26
27
28


JOHN A. CROWLEY

1500

CYBERSPACE.COM LLC.

110 WEST 9TH STREET 588
WILMINGTON, DE 19801
888-285-5196

66-21/530
BRANCH 05455

DATE 12-22-99

AY TO THE
ORDER OF

US Network Service

\$ 12,317.43

Twelve thousand three hundred and 43/100

DOLLARS

Signature required
for cash payment
Check only on back

**FIRST
UNION**

First Union National Bank

R/T 053000219

[Signature]

OR

⑈00001500⑈ ⑆053000219⑆ 2000001998478⑈

POSTED

JK-0000729

CYBERSPACE.COM PROJECT

NAME	RATE / MO	Jan-99	Feb-99	Mar-99	Apr-99	May-99	Jun-99	Jul-99	Aug-99	Sep-99	Oct-99	Nov-99	Dec-99	TOTALS
SOON L.	5,273.46	3,955.10	3,955.10	3,955.10	3,955.10	3,955.10	3,955.10	3,955.10	3,955.10	3,955.10	3,955.10	3,955.10	3,955.10	35,595.86
ANDREW K	5,296.88	2,648.44	2,648.44	2,648.44	2,648.44	2,648.44	2,648.44	2,648.44	2,648.44	2,648.44	2,648.44	2,648.44	2,648.44	23,835.97
BOB A	4,218.75	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	11,390.63
KATIE M	2,671.50					667.88	667.88	667.88	667.88	667.88	667.88	667.88	667.88	3,339.38
FRED W	2,343.77					585.94	585.94	585.94	585.94	585.94	585.94	585.94	585.94	2,929.71
BRIAN M	5,156.27	515.63	515.63	515.63	515.63	515.63	515.63	515.63	515.63	515.63	515.63	515.63	515.63	4,640.64
ANDREW T	3,140.65					157.03	157.03	157.03	157.03	157.03	157.03	157.03	157.03	785.16
ALEX	5,062.59					1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	1,265.63	6,328.13
STAFFORD	6,281.83					1,256.37	1,256.37	1,256.37	1,256.37	1,256.37	1,256.37	1,256.37	1,256.37	6,281.83
TOTAL WAGES		8,384.79	8,384.79	8,384.79	8,384.79	12,317.63	12,317.63	12,317.63	12,317.63	12,317.63	12,317.63	0.00	0.00	95,127.30

INVOICED
10/15/10

Month
1-99
2-99
3-99
4-99
5-99
6-99

Acct
8,385
8,385
8,385
8,385
12,318
12,318

POSTED
10/15/10

OCT. 99

58,176

8R-24

City Manager Alvin Pass through
expenses

CYBERSPACE. COM LLC.


110 WEST 9TH STREET 588
WILMINGTON, DE 19801
888-285-5196

1637

66-21/530
BRANCH 05455

DATE 4.10.00

PAY TO THE ORDER OF US network services \$ 39472.02

Thirty nine thousand four hundred twenty two & 00/100 DOLLARS 

**FIRST
UNION**

First Union National Bank

R/T 053000219

(Signature)

OR

⑈00001637⑈ ⑈053000219⑈ 2000001998478⑈

POSTED
4/10/00

JK-0000731

CYBERSPACE.COM PROJECT

N A M E S	RATE / MO		Jan-00	Feb-00	Mar-00	Apr-00
SOON L.	5,273.46	75%	3,955.10	3,955.10	3,955.10	
ANDREW K.	5,826.58	50%	2,913.29	2,913.29	2,913.29	
BOB A.	4,218.75	30%	1,265.63	1,265.63	1,265.63	
MELINDA K.	3,281.25	30%	984.38	984.38	1,312.50	
BRIAN M.	5,156.27	40%	2,062.51	2,062.51	2,062.51	
ANDREW T.	3,454.70	5%	172.74	172.74	172.74	
ALEX	5,062.50	25%	1,265.63	1,265.63	1,265.63	
DAMON	4,537.51	20%	907.50	907.50	907.50	
ROBERT D.	3,375.00	60%	2,025.00	2,025.00	2,531.25	
Brian Short	7,581.56	15%	1,137.23	1,137.23	1,137.23	
Michelle F.	2,535.00	25%	633.75	633.75	633.75	
Marie T.	1,901.25	25%	475.31	475.31	475.31	
Neil R.	3,328.14	15%	499.22	499.22	499.22	
TOTAL WAGES			18,297.27	18,297.27	19,131.65	0.00
PAYMENT RECEIVED						
BALANCE DUE			18,297.27	18,297.27	19,131.65	0.00

Note changing in the month of March
Melinda 40%, robert D 75%

JK-0000732

<i>May-00</i>	<i>Jun-00</i>	<i>Jul-00</i>	<i>Aug-00</i>	<i>Sep-00</i>	<i>Oct-00</i>	<i>Nov-00</i>
0 00	0.00	0.00	0.00	0.00	0.00	0.00
				12,317.63		
0.00	0.00	0.00	0.00	(12,317.63)	0.00	0.00

Dec-00	TOTALS
	11,865.29
	8,739.87
	3,796.88
	3,281.25
	6,187.52
	518.21
	3,796.88
	2,722.50
	6,581.25
	3,411.70
	1,901.25
	1,425.94
	1,497.66
0.00	0.00
	55,726.19
	12,317.63
0.00	0.00
	43,408.56

JK-0000734

CYBERSPACE. COM LLC.

110 WEST 9TH STREET 588
WILMINGTON, DE 19801
888-285-5196

1612

88-21/530
BRANCH 05455

DATE 3-9-00

PAY TO THE ORDER OF US Network \$ 36,514.54
Thirty Six thousand five ninety four & 54/100 DOLLARS

FIRST UNION

First Union National Bank

R/T 053000219

(Signature)

7R

⑈00001612⑈ ⑈053000219⑈ 2000001998478⑈

POSTED
3/9/00

JK-0000735

CYBERSPACE.COM PROJECT

NAME S	RATE / MO	Jan-00	Feb-00	Mar-00	Apr-00	May-00	Jun-00	Jul-00	Aug-00	Sep-00	Oct-00	Nov-00	Dec-00	TOTALS
SOON L.	5,273.46	75%	3,955.10	3,955.10										7,910.19
ANDREW K.	5,826.58	50%	2,913.29	2,913.29										5,826.58
BOB A.	4,218.75	30%	1,265.63	1,265.63										2,531.25
MELINDA K.	3,281.25	30%	984.38	984.38										1,968.75
BRIAN M.	5,156.27	40%	2,062.51	2,062.51										4,125.02
ANDREW T.	3,454.70	5%	172.74	172.74										345.47
ALEX	5,062.50	25%	1,265.63	1,265.63										2,531.25
DAMON	4,537.51	20%	907.50	907.50										1,815.00
ROBERT D.	3,375.00	60%	2,025.00	2,025.00										4,050.00
Brian Short	7,581.56	15%	1,137.23	1,137.23										2,274.47
Michelle F.	2,535.00	25%	633.75	633.75										1,267.50
Marie T.	1,901.25	25%	475.31	475.31										950.63
Neil R.	3,328.14	15%	499.22	499.22										998.44
TOTAL WAGES			18,297.27	18,297.27	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	36,594.54
PAYMENT RECEIVED										12,317.63				12,317.63
BALANCE DUE			18,297.27	18,297.27	0.00	0.00	0.00	0.00	0.00	(12,317.63)	0.00	0.00	0.00	24,276.91

JK-0000736

CYBERSPACE.COM LLC.

110 WEST 9TH STREET 588
WILMINGTON, DE 19801
888-285-5196

1323

66-21/530
BRANCH 05455

DATE 7-2-99

PAY TO THE ORDER OF Ria Yagelowich \$ 7500.00

Seven thousand five hundred and no/100 DOLLARS



First Union National Bank

R/T 053000219

FOR

⑈00001323⑈ ⑆053000219⑆ 2000001998478⑈

POSTED
7-2-99

JK-0000737

Marsha
From: DonR@usnetwork.com
Sent: Monday, June 21, 1999 1 59 PM
To: mkasowski@intecinvest.com
Subject: Lia

Marsha,

Please compensate Lia in the amount of \$15,000 for her role as President of Cyberspace. She should receive two installments each for \$7500 - one on July 1st and the second on August 1st

Thank you,
Don M Reese

6005.10
POSTED
7-1-99

JK-0000738

1342

CYBERSPACE.COM LLC.

110 WEST 9TH STREET 588
WILMINGTON, DE 19801
888-285-5196

66-21/530
BRANCH 05455

DATE 8-3-99

PAY TO THE ORDER OF Ria Yagciowich \$ 7500.00

Seven thousand five hundred and no/100 DOLLARS



First Union National Bank

R/T 053000219

FOR

⑈00001342⑈ ⑆053000219⑆ 2000001998478⑈

ENTERED
8-3-99

JK-0000739

Marsha

From: DonR@usnetwork.com
Sent: Monday, June 21, 1999 1:59 PM
To: mkaslawski@intecinvest.com
Subject: Lia

Marsha,

Please compensate Lia in the amount of \$15,000 for her role as President of Cyberspace. She should receive two installments each for \$7500 - one on July 1st and the second on August 1st.

Thank you,
Don M. Reese



6005.10
ENTERED
8-3-99

JK-0000740

CYBERSPACE.COM LLC.

110 WEST 9TH STREET 588
WILMINGTON, DE 19801
888-286-5196

JK-0000741

1323

88-21/630
BRANCH 05453

DATE 7-2-99

050044747 07-13-99 693 7300.00

PAY TO THE
ORDER OF

Ria Yagelowich

Seven thousand five hundred and no/100

DOLLARS



First Union National Bank

R/T 053000219

FOR

A. Yager

⑈00001323⑈

⑈053000219⑈2000001998478⑈

⑈0000750000⑈

JK-0000742

ENDORSE HERE

X
For deposit only
919-31-386

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

0521 30555

JUL 12 1999

RECEIVED
JUL 12 1999
CITICORP BANK, N.A.

⑈0340000⑈ ⑈0530-0020-6⑈
⑈00044747⑈ ⑈0530-0020-6⑈
⑈00044747⑈ ⑈07-13-99⑈

07162-6 07131999
WILKESBORO NC

⑈12500000244⑈

⑈053000219⑈

Commercial Checking

01 2000001998478 001 140 23 34

Replacement Statement 001

CYBERSPACE.COM LLC
6 HUTTON CENTRE SUITE 1100
SANTA ANA CA 92707

CB

Commercial Checking

7/31/1999 thru 8/31/1999

Account number: 2000001998478
Account holder(s): CYBERSPACE.COM LLC
Taxpayer ID Number: 911921906

Account Summary

Opening balance 7/31	\$144,951.71
Deposits and other credits	570,239.66 +
Checks	367,393.21 -
Other withdrawals and service fees	241,801.40 -
Closing balance 8/31	\$105,996.76

Deposits and Other Credits

Date	Amount	Description	
8/09	174,091.75	FUNDS TRANSFER (ADVICE 990809028885) RCVD FROM ASIA EUROPE AMERI/ ORG=OLYMPIC TELECOMMUNICATIONS INC RFB= OBI=JUL 28-JUL 30 \$174 REF= 04:54PM	00990809028885
8/12	3.50	COUNTER DEPOSIT	00003513496663
8/16	10.50	COUNTER DEPOSIT	00003514836936
8/16	174,860.84	FUNDS TRANSFER (ADVICE 990816025685) RCVD FROM ASIA EUROPE AMERI/ ORG=OLYMPIC TELECOMMUNICATIONS INC RFB= OBI=AUG 4-AUG 6 REF= 03:17PM	00990816025685
8/18	17.50	COUNTER DEPOSIT	00003515946620
8/19	95.50	COUNTER DEPOSIT	00003711644294
8/23	146,595.74	FUNDS TRANSFER (ADVICE 990823028398) RCVD FROM ASIA EUROPE AMERI/ ORG=OLYMPIC TELECOMMUNICATIONS INC RFB= OBI=AUG 10 -AUG 13 \$1465 REF= 04:39PM	00990823028398
8/25	52.50	COUNTER DEPOSIT	00003713625933
8/25	52.50	COUNTER DEPOSIT	00003713625959
8/25	3,125.37	CK# 340943 RETURNED FORGED ITEM COUNTERFEIT	00000366201011

Deposits and Other Credits continued on next page.

Commercial Checking

02 2000001998478 001 140 23 34

Replacement Statement

001

Deposits and Other Credits continued

Date Amount Description

8/30 71,274.06 FUNDS TRANSFER (ADVICE 990830028850) 00990830028850
 RCVD FROM ASIA EUROPE AMERI/
 ORG=OLYMPIC TELECOMMUNICATIONS INC
 RFB= OBI=AUG 3- AUG 20 \$71274
 REF= 04:01PM

8/31 59.90 COUNTER DEPOSIT 00003511568054

Total \$570,239.66

Checks

Number	Amount	Date posted	Number	Amount	Date posted	Number	Amount	Date posted
1337	648.04	8/02	1346	78,057.00	8/11	1354	4,984.74	8/23
1338	500.00	8/13	1347	1,208.00	8/11	1355	55.00	8/19
1339	9,777.00	8/09	1348	1,183.03	8/16	1356	85.15	8/25
1340	1,067.50	8/11	1349	62,304.00	8/16	1358*	5,000.00	8/30
1341	40,214.26	8/11	1350	62,304.00	8/25	1359	5,000.00	8/30
1342	7,500.00	8/09	1351	62,304.00	8/25	1360	717.91	8/24
1343	5,000.00	8/09	1352	291.36	8/20	1362*	4,088.69	8/31
1345*	980.73	8/09	1353	14,122.80	8/20	Total	\$367,393.21	

*Indicates a break in check number sequence

Other Withdrawals and Service Fees

Date Amount Description

8/04 1,371.74 DISBURSEMENT FUNDING 00000000000308
 8/05 2,266.00 DISBURSEMENT FUNDING 00000000000303
 8/06 4,025.00 DISBURSEMENT FUNDING 00000000000301
 8/09 5,264.00 DISBURSEMENT FUNDING 00000000000300
 8/10 2,280.50 DISBURSEMENT FUNDING 00000000000297
 8/11 2,339.95 COMMERCIAL SERVICE CHARGES FOR JULY 1999 00000000000000
 8/11 3,730.60 DISBURSEMENT FUNDING 00000000000308
 8/12 2,753.00 DISBURSEMENT FUNDING 00000000000305
 8/13 1,781.50 DISBURSEMENT FUNDING 00000000000308
 8/16 14,939.00 DISBURSEMENT FUNDING 00000000000310
 8/17 1,837.50 DISBURSEMENT FUNDING 00000000000301
 8/17 100,000.00 CCSC C52354 TRANSFER TO 2000001998229 00000639301003
 8/18 3,185.00 DISBURSEMENT FUNDING 00000000000303
 8/19 3,402.01 DISBURSEMENT FUNDING 00000000000306
 8/20 6,377.13 DISBURSEMENT FUNDING 00000000000302

Other Withdrawals and Service Fees continued on next page.

Commercial Checking

03 2000001998478 001 140 23 34

Replacement Statement 001

Other Withdrawals and Service Fees continued

Date	Amount	Description	
8/23	6,468.60	DISBURSEMENT FUNDING	00000000000306
8/24	19,639.01	DISBURSEMENT FUNDING	00000000000309
8/25	15,457.72	DISBURSEMENT FUNDING	00000000000307
8/26	403.90	DISBURSEMENT FUNDING	00000000000304
8/27	8,723.32	DISBURSEMENT FUNDING	00000000000302
8/30	15,171.00	DISBURSEMENT FUNDING	00000000000309
8/31	20,384.92	DISBURSEMENT FUNDING	00000000000309
Total	\$241,801.40		

Daily Balance Summary

Dates	Amount	Dates	Amount	Dates	Amount
08/02	144,303.67	08/12	150,563.64	08/23	250,712.05
08/04	142,931.93	08/13	148,282.14	08/24	230,355.13
08/05	140,665.93	08/16	244,727.45	08/25	93,434.63
08/06	136,640.93	08/17	142,889.95	08/26	93,030.73
08/09	282,210.95	08/18	139,722.45	08/27	84,307.41
08/10	279,930.45	08/19	136,360.94	08/30	130,410.47
08/11	153,313.14	08/20	115,569.65	08/31	105,996.76

EFFECTIVE SEPTEMBER 1, 1999, THE EARNINGS CREDIT RATE WILL BE DETERMINED BY THE AVERAGE POSITIVE COLLECTED BALANCE LESS RESERVE REQUIREMENT AND COMPENSATING BALANCES.

Commercial Checking

04 2000001998478 001 140

23 34

Replacement Statement

001

Customer Service Information

For questions about your statement
or billing errors, contact us at: Phone number Address

Business Checking, CheckCard & Loan
Accounts 1-800-566-3862 FIRST UNION NATIONAL BANK
Commercial Checking & Loan Accounts 1-800-222-3862 CHARLOTTE NC 28288-0851
TDD (For the Hearing Impaired) 1-800-835-7721

Commercial Credit Card & Inquiries 1-800-704-0883 FIRST UNION CARD PRODUCTS
POST OFFICE BOX 563966
CHARLOTTE NC 28256-3966
24 HOURS A DAY, 365 DAYS A YEAR

In Case of Errors or Questions About Your Electronic Transfers: Telephone us at
1-800-704-0883 or Write us at FIRST UNION CARD PRODUCTS, POST OFFICE BOX 563966, CHARLOTTE
NC 28256-3966, as soon as you can, if you think your statement or receipt is wrong or if
you need more information about a transfer on the statement or receipt. We must hear from
you no later than 60 days after we sent you the FIRST statement on which the error or
problem appeared.

1. Tell us your name and account number (if any).
 2. Describe the error or the transfer you are unsure about, and explain as clearly as you
can why you believe there is an error or why you need more information.
 3. Tell us the dollar amount of the suspected error.
- We will investigate your complaint and will correct any error promptly. If we take more
than 10 business days to do this, we will credit your account for the amount you think is
in error. You will have use of the money during the time it takes us to complete our
investigation.

ORIGINAL

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

<p>FEDERAL TRADE COMMISSION, Plaintiff,</p> <p>v.</p> <p>CYBERSPACE.COM, LLC, et al,</p> <p>Defendants.</p>

Case No. C00-1806-L

**PLAINTIFF'S INTERROGATORIES
PURSUANT TO FED. R. CIV. P. 33
TO DEFENDANT OLYMPIC TELECOMMUNICATIONS, INC.**

To. Defendant Olympic Telecommunications:

Plaintiff Federal Trade Commission hereby propounds the following interrogatories to defendant Olympic Telecommunications, pursuant to Rule 33 of the Federal Rules of Civil Procedure. The following interrogatories are to be answered within 14 days from the date of service

I. INSTRUCTIONS

1. Pursuant to Rule 33 of the Federal Rules of Civil Procedure, you are to respond to each of these interrogatories separately and fully, and under oath.
2. For each interrogatory answer, identify each person who provided any of the information set forth in the answer.

3. In answering these interrogatories, unless otherwise specified, you are to furnish all information known to you at the time of your answering, regardless of whether this information is possessed by you or your employees, agents, representatives, affiliated corporations, investigators, or by your attorneys or their employees, agents, representatives or investigators.

4. These interrogatories shall, to the fullest extent permitted by law, be deemed continuing, so as to require you, without further request from plaintiff, to provide supplemental answers within 15 days of acquiring any additional information, knowledge or belief pertaining to the subject matter of any interrogatory.

5. If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the full information to do so, so state and answer to the extent possible, specifying your inability to answer the entire interrogatory, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information. If you do not have the information required to answer any of these interrogatories but you do know the name of person or entity that may have such information, the name, address and telephone number and the nature of the information known by such person or entity shall be disclosed in your answer to the interrogatory.

6. If any information called for by any interrogatory is being withheld under a claim of privilege, state with respect to such interrogatory the following:

- a. the basis for withholding the information;
- b. the identity of all persons who possess the information; and
- c. the date and place of, and the identity of, all persons involved in any communications that bear on the information called for by the interrogatory.

7. For each and every answer to these interrogatories, state all the facts relied upon, and provide the evidentiary basis (identifying documents, witnesses, and other sources) for each fact identified.

8. When identifying a person or non-corporate entity, including but not limited to any partnership, joint venture, sole proprietorship or any other unincorporated association, state the person or entity's full name, last known address, and last known office and home telephone numbers. Once a person or entity has been identified in accordance with this paragraph, only the name of that person or entity need be listed in response to subsequent interrogatories requesting the identification of that person or entity.

9. When identifying a corporation, limited liability company, or other business entity (collectively, "corporation"), state the corporation's name, last known address, last known

telephone number, state of incorporation, date of incorporation, date of dissolution (if applicable), and all names under which it has done business. Once a corporation has been identified in accordance with this paragraph, only the name of that corporation need be listed in response to subsequent interrogatories requesting identification of that person.

10. When identifying a document, state the type of document, date, author, addressee, title, serial or file number, its present location, the name and address of its custodian, and the substance of the contents. If a document has been destroyed, state when and where it was destroyed, identify the person who destroyed it, and the person or persons who directed the destruction.

11. A question that seeks information contained in or information about or identification of any documents may be answered by providing a copy of such document for inspection and copying or by furnishing a copy of such a document without a request for production.

12. Provide all responsive information for the entire period of time specified by an interrogatory. If certain information responsive to an interrogatory applies only to part of the period of time specified by the interrogatory, state the dates between which such information applies.

13. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used and vice versa; the use of the masculine form of a pronoun shall be considered to include within its meaning the feminine form of the pronoun so used and vice versa; and the use of any tense of any verb shall be considered to include within its meaning all other tenses of the verb.

14. Whenever it is necessary to bring within the scope of these interrogatories information that otherwise might be construed to be outside their scope, "any" should be understood to include and encompass "all"; and "all" should be understood to include and encompass "any"; and "or" should be understood to include and encompass "and," and "and" should be understood to include and encompass "or."

15. The use of the words "include(s)" and "including" shall be construed to mean without limitation.

16. The terms "present" or "presently" refer to the date of service of these interrogatories.

17. The applicable time period to which these interrogatories apply is from January 1, 1998 to present, unless otherwise specified by the interrogatory.

18. Plaintiff will move at the commencement of trial to preclude you from presenting

evidence regarding responsive matters you have failed to set forth in your answers to these interrogatories.

II. DEFINITIONS

1. The term "defendants" means any one or more than one of the following parties: Cyberspace.com, LLC; Electronic Publishing Ventures, LLC; Coto Settlement; French Dreams, NV; Olympic Telecommunications, Inc.; Ian Eisenberg; and Chris Hebard.

2. The term "corporate defendants" means Cyberspace.com, LLC; Electronic Publishing Ventures, LLC; Coto Settlement; French Dreams, NV; and Olympic Telecommunications, Inc.

3. The term "individual defendants" means Ian Eisenberg and Chris Hebard.

4. The term "Olympic" means Olympic Telecommunications, Inc.; the term "French Dreams" means French Dreams, NV; the term "Coto" means Coto Settlement; the term "Cyberspace" means Cyberspace.com, LLC; and the term "EPV" means Electronic Publishing Ventures, LLC. The term "EPV subsidiaries" includes all subsidiaries of EPV that were engaged in the marketing and sale of Internet-related services.

5. The term "consumer" includes individuals and business entities.

6. The term "person" includes individuals and business entities.

7. The term "present" means up to and including the date of your response to these Interrogatories.

8. The term "approximately" means within five percent (5%) of any number stated in a specific interrogatory.

9. The term "LEC" means Local Exchange Carrier from which telephone line subscribers receive local dial tone service.

10. The term "detail records" means records of the monthly charges for consumer who was billed by any of the EPV subsidiaries.

11. The term "solicitation check" means any check that, if deposited or cashed by a consumer or business, obligates the consumer or business to pay for goods or services sold by any defendant.

12. The term "marketing material" means all printed material, including the envelope, inserts, flyers, solicitation checks, and any other material sent to consumers that described

services offered by any of the EPV subsidiaries.

13. The term "computer records" means any type of data stored electronically including but not limited to any data stored on disc or on tape.

14. The term "communication" means any contact, whether oral or written, formal or informal, at any time or place, and under any circumstances whatsoever, whereby information of any kind or nature was transmitted, transferred or recorded.

15. The term "you" or "your" means the person to whom these Interrogatories are directed.

16. "Document" has the full extent of its meaning as provided in Rules 26 and 34 of the Federal Rules of Civil Procedure and includes the original or a copy of the original and any nonidentical copy, regardless of original location, of any recorded, written, printed, typed, or other graphic material of any kind, variety, type or character including, by way of example but not limited to, the following: books; records; contracts; agreements; invoices; orders; bills, certificates; bills of sale; certificates of title; financing statements; instruments; expense accounts; canceled checks; bank statements; bank books; receipts; disbursement journals; tax returns; financial statements; check stubs; promissory notes; resumes; address books; appointment books; telephone logs; worksheets; pictures; income statements; profit and loss statements; balance statements; deposit slips; credit card receipts; records or notations of telephone or personal conversations; conferences; intra office communications; postcards; letters; telexes; partnership agreements; articles of incorporation; mailing lists; catalog price lists; sound, tape and video records; memoranda (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts and activities); minutes, manuals, diaries; calendar or deskpads; scrapbooks; notebooks; correspondence; bulletins; circulars; policies; forms; pamphlets; notices; statements; journals; letters; telegrams; reports; interoffice communications, photostats; microfilm; microfiche, maps; deposition transcripts; email messages; drawings; blueprints; photographs; negatives; and any other data, information, or statistics contained within any data storage modules, tapes, discs, or any other memory device (including on any computer) or any other information retrievable on storage systems, including computer-generated reports and printouts.

17. The term "Data Dump" means the thirteen Text Files included in the CDROM sent by Deena Burgess to the FTC on September 24, 2001. The disc was referred to as the "entire database from Cyberspace," in the letter accompanying the CDROM.

18. The term "Data Field" means an element, generally of a Table, that contains a specific type of information. In the thirteen Text Files that make up the Data Dump, the alphanumeric terms enclosed in quotations and separated by commas in the first lines of each Text File represent the Data Field Names. For instance, in Attachment 1a through 1c, the Data Field Names are circled for three of the thirteen Text Files provided in the Data Dump.

19. The term "Data" means a gathered body of facts. In each of the Text Files making up the Data Dump, the alpha-numeric items that are separated by commas and included in the second through last lines are individual pieces of data. They correspond to a particular Data Field according to the "place" they hold. "Places" are separated by commas.

20. The term "Record" means a collection of data about a person, place, event or some other item. In the Text Files that make up the Data Dump, each "line," from the second through the last, is an individual record. "Lines" are separated by hard returns. For instance, in Attachment 1a through 1c, a record is circled in each of three of the Text Files provided in the Data Dump.

III. INTERROGATORIES TO OLYMPIC TELECOMMUNICATIONS

1. Describe each electronic database used by Olympic employees in connection with the business activities of the EPV subsidiaries.

2. Describe each type of report Olympic created based on the information in each database described in your response to Interrogatory # 1.

3. Identify all types of records created, maintained, and/or used by Olympic employees in connection with the business activities of the EPV subsidiaries.

4. State the number of consumer complaints, whether in writing, by email, or by telephone, from all sources, that Olympic received with respect to the EPV subsidiaries.

5. State the billing dates between which Olympic billed for the EPV subsidiaries.

6. State the number of consumers billed by Olympic on behalf of each EPV subsidiary, or in the alternative, state the number of distinct ANIs or BTNs (i.e., telephone numbers) you forwarded to the LECs for billing on behalf of each EPV subsidiary

7. State the aggregate amount consumers were billed by Olympic on behalf of each EPV subsidiary, or in the alternative, state the aggregate amount billed by Olympic on behalf of all the EPV subsidiaries

8. State the aggregate amount of full refunds received by consumers who were billed by Olympic on behalf of the EPV subsidiaries.

9. State the aggregate amount of partial refunds received by consumers who were billed by Olympic on behalf of the EPV subsidiaries.

10. Identify the aggregate amount in refunds that customer service representatives

entered into the database used by Lia Yagelowich to issue refund checks to customers of the EPV subsidiaries.

11. Identify the aggregate amount in telephone credits provided by Olympic to customers of the EPV subsidiaries.

12. Identify the aggregate amount in telephone credits provided by the telephone companies to customers of the EPV subsidiaries.

13. Identify all LECs that stopped placing charges from the EPV subsidiaries on telephone bills, and explain the reason given for discontinuing placement of the EPV charges on telephone bills.

14. Attachment 2 lists and numbers the thirteen Text Files in the "Data Dump" as defined above. Describe what information was put into each Text File, and the source of that information.

15. Attachment 3 includes all Data Fields provided in the thirteen Text Files that are in the Data Dump. Explain what each Data Field represents. In instances where the data included in the field were coded against descriptive values, include in your answer a key or other reference that defines the values for each of the codes or numbers. For example, in the "Cancel_Log.txt" file (# 2 on Attachment 3a), for the "Data Field" called "OptionID" (# 2 c), the data are numbers ranging from 1 to 30. Please provide a description of what each of these numbers represents.

16. Identify all persons, or category of persons, who had access to read or write to the Customer Service Database

17. Describe all parts of the Customer Service Database the person or category of persons identified in your response to Interrogatory 17, had access to and whether the access was read-only access or whether they could add information to, delete from, or modify information in the database.

18. Identify all types of reports created by employees or other persons who had access to the Customer Service Database.

19. Identify by name which EPV subsidiaries had their billing information and refund information included in Olympic's Customer Service Database.

20. Exhibits 53 and 54 to the Hebard deposition are each entitled "Collateral Assignment of Billing Services Agreement." For each of these documents, state the date and amount of each promissory note referenced in each Collateral Assignment, state the purpose of each Collateral Assignment, and state the reason for each loan made available by the Lender to

the Borrower. (Note: Olympic agreed to the Collateral Assignments in documents entitled "Agreement and Consent to Agreement" E 24060-63 and H 5321-24, which are attached).

Respectfully submitted,


Collot Guerard

Michael Goodman
Attorneys for the Plaintiff
FEDERAL TRADE COMMISSION
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Washington, DC 20580
202-326-3338 (office)
202-326-3395 (facsimile)
cguerard@ftc.gov

March 19, 2002

Source: Cancel_Log.txt

"CancelID"	"csuid"	"OptionID"	"CancelDate"	"RequestDate"	"CSID"	Data Field Names
1,30573,1,1999-05-07 06:33:00,2000-02-29 09:15:00,1						
2,15776,1,1999-05-04 12:54:00,2000-02-29 09:15:00,1						Record
3,16245,1,1999-05-04 12:56:00,2000-02-29 09:15:00,1						
4,16509,1,1999-05-04 12:58:00,2000-02-29 09:15:00,1						
5,16629,1,1999-05-04 12:58:00,2000-02-29 09:15:00,1						
6,16657,1,1999-05-04 12:58:00,2000-02-29 09:15:00,1						
7,16783,1,1999-05-04 12:59:00,2000-02-29 09:15:00,1						
8,16948,1,1999-05-04 13:00:00,2000-02-29 09:15:00,1						
9,17078,1,1999-05-04 13:01:00,2000-02-29 09:15:00,1						
10,17340,1,1999-05-04 13:02:00,2000-02-29 09:15:00,1						
11,19311,1,1999-05-04 13:12:00,2000-02-29 09:15:00,1						
12,21317,1,1999-05-04 13:24:00,2000-02-29 09:15:00,1						
13,21706,1,1999-05-04 13:26:00,2000-02-29 09:15:00,1						
14,22395,1,1999-05-04 13:30:00,2000-02-29 09:15:00,1						
15,22889,1,1999-05-04 13:33:00,2000-02-29 09:15:00,1						
16,23194,1,1999-05-04 13:35:00,2000-02-29 09:15:00,1						
17,23711,1,1999-05-04 13:38:00,2000-02-29 09:15:00,1						
18,24607,1,1999-05-04 13:43:00,2000-02-29 09:15:00,1						
19,28985,1,1999-05-04 14:19:00,2000-02-29 09:15:00,1						
20,30456,1,1999-05-04 15:10:00,2000-02-29 09:15:00,1						
21,30457,1,1999-05-04 15:31:00,2000-02-29 09:15:00,1						
22,30458,1,1999-05-04 15:37:00,2000-02-29 09:15:00,1						
23,30459,1,1999-05-04 15:49:00,2000-02-29 09:15:00,1						
24,30460,1,1999-05-04 15:49:00,2000-02-29 09:15:00,1						
25,30461,1,1999-05-04 16:07:00,2000-02-29 09:15:00,1						
26,30462,1,1999-05-05 06:29:00,2000-02-29 09:15:00,1						
27,30463,1,1999-05-05 06:50:00,2000-02-29 09:15:00,1						
28,30464,1,1999-05-05 07:39:00,2000-02-29 09:15:00,1						
29,30465,1,1999-05-05 07:43:00,2000-02-29 09:15:00,1						
30,30466,1,1999-05-05 07:49:00,2000-02-29 09:15:00,1						
31,30467,1,1999-05-05 07:55:00,2000-02-29 09:15:00,1						
32,30468,1,1999-05-05 08:02:00,2000-02-29 09:15:00,1						
33,30469,1,1999-05-05 08:04:00,2000-02-29 09:15:00,1						
34,30470,1,1999-05-05 08:25:00,2000-02-29 09:15:00,1						
35,30471,1,1999-05-05 08:27:00,2000-02-29 09:15:00,1						
36,30472,1,1999-05-05 08:27:00,2000-02-29 09:15:00,1						
37,30473,1,1999-05-05 08:34:00,2000-02-29 09:15:00,1						
38,30474,1,1999-05-05 09:01:00,2000-02-29 09:15:00,1						
39,30475,1,1999-05-05 09:03:00,2000-02-29 09:15:00,1						
40,30476,1,1999-05-05 09:07:00,2000-02-29 09:15:00,1						
41,30477,1,1999-05-05 09:11:00,2000-02-29 09:15:00,1						
42,30478,1,1999-05-05 09:20:00,2000-02-29 09:15:00,1						
43,30479,1,1999-05-05 09:24:00,2000-02-29 09:15:00,1						
44,30480,1,1999-05-05 09:29:00,2000-02-29 09:15:00,1						
45,30481,1,1999-05-05 09:33:00,2000-02-29 09:15:00,1						
46,30482,1,1999-05-05 09:44:00,2000-02-29 09:15:00,1						
47,30483,1,1999-05-05 09:49:00,2000-02-29 09:15:00,1						
48,30484,1,1999-05-05 09:56:00,2000-02-29 09:15:00,1						
49,30486,1,1999-05-05 10:09:00,2000-02-29 09:15:00,1						
50,30488,1,1999-05-05 10:33:00,2000-02-29 09:15:00,1						
51,30490,1,1999-05-05 10:52:00,2000-02-29 09:15:00,1						
52,30492,1,1999-05-05 11:01:00,2000-02-29 09:15:00,1						
53,30493,1,1999-05-05 11:12:00,2000-02-29 09:15:00,1						
54,30494,1,1999-05-05 11:19:00,2000-02-29 09:15:00,1						
55,30495,1,1999-05-05 11:22:00,2000-02-29 09:15:00,1						
56,30496,1,1999-05-05 11:38:00,2000-02-29 09:15:00,1						
57,30497,1,1999-05-05 11:46:00,2000-02-29 09:15:00,1						
58,30498,1,1999-05-05 11:51:00,2000-02-29 09:15:00,1						
59,30499,1,1999-05-05 12:09:00,2000-02-29 09:15:00,1						
60,30500,1,1999-05-05 12:50:00,2000-02-29 09:15:00,1						

Attachment 1a

Source: Cancelled_User_Log.txt

"CancelID", "CSUID", "CSU_Action", "CSU_LineType", "CSU_UserName", "CSU_UserPass", "CSU_AddDate", "CSU_EditDate", "CSU_Deletedate", "CSU_Requestdate", "CSU_ANI", "CSU_ChkNumber", "CSU_DateCached", "CSU_SourceFile", "CSU_FullName", "CSU_Coname", "CSU_Address", "CSU_City", "CSU_State", "CSU_Zip", "CSU_Zip4", "CSU_Megapop", "siteid"

Record	Field	Names
1,89698	"CREATE ACCOUNT"	"Analog or 1B ISDN", "great10", "w2387267", "1999-09-19 00:00:00,, 1999-10-26 15:46:00,, "2012160003", "2387267,, "990903.TXT", "", "GREAT WALL RESTAURANT", "239 CENTRAL AVE", "JERSEY CITY", "NJ", "07307", "", True, 1
2,114407	"CREATE ACCOUNT"	"Analog or 1B ISDN", "mecca22", "h2886988", "1999-09-19 00:00:00,, 1999-11-02 12:16:00,, "2012222829", "2886988,, "990928.TXT", "", "MECCA HALAL MEAT WHOLESALE", "3019 JOHN F KENNEDY BLVD", "JERSEY CITY", "NJ", "07306", "", True, 1
3,105980	"CREATE ACCOUNT"	"Analog or 1B ISDN", "grand216", "b2882370", "1999-09-19 00:00:00,, 1999-10-14 14:14:00,, "2012223800", "2882370,, "990921.TXT", "", "GRAND BAKERY", "738 WILLOW AVE", "HOBOKEN", "NJ", "07030", "", True, 1
4,73172	"CREATE ACCOUNT"	"Analog or 1B ISDN", "patel27", "c2137344", "1999-09-19 00:00:00,, 1999-10-21 14:22:00,, "2012227572", "2137344,, "990823.TXT", "", "PATEL CASH & CARRY", "782 NEWARK AVE", "JERSEY CITY", "NJ", "07306", "", True, 1
5,71522	"CREATE ACCOUNT"	"Analog or 1B ISDN", "prince23", "e2137346", "1999-08-19 00:00:00,, 1999-10-21 08:08:00,, "2012228734", "2137346,, "990820.TXT", "", "PRINCE ELECTRONICS", "787 NEWARK AVE APT 2", "JERSEY CITY", "NJ", "07306", "", True, 1
6,95204	"CREATE ACCOUNT"	"Analog or 1B ISDN", "miami25", "e2635372", "1999-09-19 00:00:00,, 1999-11-04 09:06:00,, "2012234855", "2635372,, "990914.TXT", "", "MIAMI EXPRESS INC", "406 32ND ST", "UNION CITY", "NJ", "07087", "", True, 1
7,78202	"CREATE ACCOUNT"	"Analog or 1B ISDN", "nail201", "a2132365", "1999-09-19 00:00:00,, 1999-11-08 12:45:00,, "2012242208", "2132365,, "990825.TXT", "", "NAIL GALLERY", "1550 LEMOINE AVE STE 2", "FORT LEE", "NJ", "07024", "", True, 1
8,51738	"CREATE ACCOUNT"	"Analog or 1B ISDN", "cliffs21", "id1015853", "1999-08-19 00:00:00,, 1999-11-08 08:46:00,, "2012242302", "1015853,, "990726.TXT", "", "CLIFFSIDE UPHOLSTERY", "14 DEMPSEY AVE # A", "EDGEWATER", "NJ", "07020", "", False, 1
9,73200	"CREATE ACCOUNT"	"Analog or 1B ISDN", "genera25", "l2132215", "1999-09-19 00:00:00,, 1999-11-09 08:08:00,, "2012245335", "2132215,, "990823.TXT", "", "GENERAL NUTRITION CTR", "1475 BERGEN BLVD", "FORT LEE", "NJ", "07024", "", True, 1
10,81949	"CREATE ACCOUNT"	"Analog or 1B ISDN", "vip27", "e2381694", "1999-09-19 00:00:00,, 1999-11-10 15:18:00,, "2012245377", "2381694,, "990827.TXT", "", "VIP CLEANERS INC", "1341 16TH ST", "FORT LEE", "NJ", "07024", "", True, 1
11,120127	"CREATE ACCOUNT"	"Analog or 1B ISDN", "sophia26", "s2882183", "1999-10-08 00:00:00,, 1999-11-08 12:35:00,, "2012246369", "2882183,, "990930.TXT", "", "SOPHIAS BUILDERS", "1058 DEARBORN RD # S", "FORT LEE", "NJ", "07024", "", True, 1
12,108330	"CREATE ACCOUNT"	"Analog or 1B ISDN", "avas22", "o2783829", "1999-09-19 00:00:00,, 1999-11-05 06:15:00,, "2012294720", "2783829,, "990922.TXT", "", "AVAS CORP", "55 RUTA CT", "SOUTH HACKENSACK", "NJ", "07606", "", True, 1
13,90102	"CREATE ACCOUNT"	"Analog or 1B ISDN", "pho38", "a1513919", "1999-09-19 00:00:00,, 1999-10-29 07:39:00,, "2012391988", "1513919,, "990903.TXT", "", "PHO THANH HOAI RESTAURANT", "249 NEWARK AVE", "JERSEY CITY", "NJ", "07302", "", True, 1
14,108825	"CREATE ACCOUNT"	"Analog or 1B ISDN", "bolan33", "t2633256", "1999-09-19 00:00:00,, 1999-10-28 11:10:00,, "2012397330", "2633256,, "990922.TXT", "", "BOLAN TRADING CO", "70 HUDSON ST STE 1", "HOBOKEN", "NJ", "07030", "", True, 1
15,96816	"CREATE ACCOUNT"	"Analog or 1B ISDN", "sung40", "a2881987", "1999-09-19 00:00:00,, 1999-10-07 10:21:00,, "2012421004", "2881987,, "990915.TXT", "", "SUNG & ASSOC", "2024 CENTER AVE", "FORT LEE", "NJ", "07024", "", True, 1
16,99510	"CREATE ACCOUNT"	"Analog or 1B ISDN", "a660000", "u2892536", "1999-09-19 00:00:00,, 1999-10-19 12:26:00,, "2012610264", "2892536,, "990916.TXT", "", "A K PLUMBING & HEATING INC", "440 HOLLY AVE", "PARAMUS", "NJ", "07652", "", True, 1
17,114544	"CREATE ACCOUNT"	"Analog or 1B ISDN", "nail66", "l2784610", "1999-09-19 00:00:00,, 1999-10-15 16:54:00,, "2012612060", "2784610,, "990928.TXT", "", "NAIL

Source: Credit_Record_Log.txt

"ani","fullname","coname","address","city","state","zip","totalbilled","totalc
redited"

Data Field Names

"2052512721","","MR KING FURNITURE","1816 3RD AVE

N","BIRMINGHAM","AL","35203",5990,5990

"2052515600","","6TH AVENUE FLEA MARKET","2924 AVENUE

T","BIRMINGHAM","AL","35208",17970,17970

"2053236500","","STORE ON HIGHLAND","2608 HIGHLAND AVE S #

B","BIRMINGHAM","AL","35205",11980,11980

"2053244715","","STACY CLAIRE BOYD INC","2825 3RD AVE

S","BIRMINGHAM","AL","35233",11980,11980

"2053840151","","CULLMAN INDUSTRIES OF ARLEY","PO BOX

274","ARLEY","AL","35541",5990,5990

"2053843317","","FREEMAN LOGGING CO","6171 FALL CITY

RD","JASPER","AL","35503",5990,5990

"2054253532","","FUTURE ELECTRIC & CONSTRUCTION","425 4TH AVE

N","BESSEMER","AL","35020",11980,11980

"2054262017","","4TH AVENUE FARMERS MARKET","830 4TH AVE

N","BESSEMER","AL","35020",11980,11980

"2054284000","","UNR ROHN INC","PO BOX 1470","BESSEMER","AL","35021",5990,5990

"2054971440","","ITS A SMALL WORLD","1285 HUEYTOWN RD #

D","BESSEMER","AL","35023",11980,11980

"2055534174","","GRAMMER MARINE","10543 DAIMLER BENZ

BLVD","VANCE","AL","35490",11980,11980

"2055534794","","UNIVERSITY CAR WASH PRO DETAIL","2320 UNIVERSITY BLVD

E","TUSCALOOSA","AL","35404",5990,5990

"2055998000","","ONEAL STEEL INC","PO BOX

2623","BIRMINGHAM","AL","35202",17970,17970

"2056312564","","TAYLOR SILK SCREEN","5992 TOMMY TOWN RD","MT

OLIVE","AL","35117",11980,11980

"2056488456","","E TS PLACE","4657 BRENTS CUTOFF

RD","DORA","AL","35062",11980,11980

"2057804723","","CANNS & CO","3601 COMMERCE

AVE","FAIRFIELD","AL","35064",23960,23960

"2059253500","","C & A TIRE CO","3125 ALEMEDA AVE

SW","BIRMINGHAM","AL","35221",5990,5990

"2059420050","","WYATT SAFETY SUPPLY CO","PO BOX

1934","BIRMINGHAM","AL","35201",5990,5990

"2059425305","","SALLY BEAUTY SUPPLY","210 GREEN SPRINGS

HWY","HOMEWOOD","AL","35209",5990,5990

"2059883055","","MAUK ADVERTISING SPECIALITIES","2415 VALLEYDALE

RD","BIRMINGHAM","AL","35244",5990,5990

"2059888169","","ASCO VALVE","500 CHASE PARK

S","BIRMINGHAM","AL","35244",11980,11980

"2059958259","","FRAMIN SHOPPE","510 CAHABA PARK

CIR","BIRMINGHAM","AL","35242",11980,11980

"2062320842","","ISLAND SECURITY SYSTEMS INC","PO BOX 265","MERCER

ISLAND","WA","98040",11980,11980

"2062431424","","STOP BY CORNER","14857 PACIFIC HWY

S","SEATTLE","WA","98168",11980,11980

"2062448020","","FUEL TANK INSTALLATION CO","11536 SEOLA BEACH DR

SW","SEATTLE","WA","98146",11980,11980

"2063231838","","EDUCATIONAL REFERRAL SVC","2222 EASTLAKE AVE

E","SEATTLE","WA","98102",11980,11980

"2065236210","","ODYSSEY II HAIR DESIGNS","8515 35TH AVE NE #

B","SEATTLE","WA","98115",11980,11980

"2065254770","","NW CULTURE & HERITAGE OBSERVER","444 NE RAVENNA BLVD #

301D","SEATTLE","WA","98115",11980,11980

Record

Attachment 1c

Data Dump File Names

1. Billing_log.txt
2. Cancel_Log.txt
3. Cancelled_User_Log.txt
4. Check_Images.txt
5. Credit_Record_Log.txt
6. CustServ_Credit_Log.txt
7. Customer_Service_Notes.txt
8. LEC_Credit_Log.txt
9. Refund_Log.txt
10. Refund_Status_Codes.txt
11. Unbillable_Log.txt
12. User_Information_History.txt
13. User_Information.txt

Data Dump Field Names

1. Billing_log.txt

- a. BillingID
- b. Ani
- c. ChargeDate
- d. Amount
- e. Unbillable
- f. siteid

2. Cancel_Log.txt

- a. CancelID
- b. csuid
- c. OptionID
- d. CancelDate
- e. RequestDate
- f. CSID

3. Cancelled_User_Log.txt

- a. CancelID
- b. CSUID
- c. CSU_Action
- d. CSU_LineType
- e. CSU_UserName
- f. CSU_UserPass
- g. CSU_AddDate
- h. CSU_EditDate
- i. CSU_Deletedate
- j. CSU_Requestdate
- k. CSU_ANI
- l. CSU_ChkNumber
- m. CSU_DateCashed
- n. CSU_SourceFile
- o. CSU_FullName
- p. CSU_Coname
- q. CSU_Address
- r. CSU_City
- s. CSU_State
- t. CSU_Zip
- u. CSU_Zip4
- v. CSU_Megapop
- w. siteid

9. Refund_Log.txt

- a. RID
- b. billingid
- c. RequestDate
- d. Credit
- e. CheckAmount
- f. Statusid
- g. RefundDate
- h. Note
- i. CSID
- j. Void

10. Refund_Status_Codes.txt

- a. Statusid
- b. Status

11. Unbillable_Log.txt

- a. ULID
- b. Ani
- c. ChargeDate
- d. ChargeAmount
- e. DateAdd

12. User_Information_History.txt

- a. HID
- b. CSUID
- c. CSU_Action
- d. CSU_LineType
- e. CSU_UserName
- f. CSU_UserPass
- g. CSU_AddDate
- h. CSU_EditDate
- i. CSU_Deletedate
- j. CSU_Requestdate
- k. CSU_ANI
- l. CSU_ChkNumber
- m. CSU_DateCashed
- n. CSU_SourceFile
- o. CSU_FullName
- p. CSU_Coname
- q. CSU_Address
- r. CSU_City

s. CSU_State
t. CSU_Zip
u. CSU_Zip4
v. csu_Megapop
w. status
x. csu_hotbucks
y. csu_hotbucks_amount
z. csu_logon
aa. siteid

13. User_Information.txt

a. CSUID
b. CSU_Action
c. CSU_LineType
d. CSU_UserName
e. CSU_UserPass
f. CSU_AddDate
g. CSU_EditDate
h. CSU_Requestdate
i. CSU_Deletedate
j. CSU_ANI
k. CSU_ChkNumber
l. CSU_DateCashed
m. CSU_SourceFile
n. CSU_FullName
o. CSU_Coname
p. CSU_Address
q. CSU_City
r. CSU_State
s. CSU_Zip
t. CSU_Zip4
u. CSU_Megapop
v. status
w. csu_hotbucks
x. csu_hotbucks_amount
y. csu_hotbucks_time
z. csu_hotbucks_C
aa. csu_logon
bb. siteid

Attachment 3d

08/27/1999 11:59

000000000000

CORPORATE OFFICES

PAGE 84

**AGREEMENT
AND
CONSENT TO ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby acknowledges and consents to the Collateral Assignment of Billing Services Agreement dated as of November 1, 1998 by and among CYBERSPACE.COM, LLC, ELECTRONIC PUBLISHING VENTURES, LLC (the "*Assignment*") and enters into this Agreement and Consent to Assignment (this "*Agreement*") as of November 1, 1998. All terms defined in the Assignment are used herein with the same meanings. Olympic hereby further agrees as follows in favor of the Lender:

1. Olympic hereby consents to the foregoing Assignment and agrees to the terms thereof, notwithstanding any contrary terms in the Billing Services Agreement. Olympic agrees that, in the event that the Lender delivers written notice to Olympic that it is exercising its rights under the Assignment, Olympic shall perform for the Lender all or such portion of Olympic's obligations and undertakings under the Billing Services Agreement as Lender may direct, notwithstanding any contrary instruction, direction or request from the Borrower; provided that any outstanding defaults under the Billing Services Agreement shall be cured and Olympic receives the compensation for such performance as provided in the Billing Services Agreement. It is expressly understood that the Lender neither assumes, nor has any obligation to Olympic to exercise the Lender's rights under the Assignment or to declare an Event of Default under the Loan, but that the option to exercise such rights or declare a default rests in the sole and absolute discretion of the Lender as provided therein. In the event the Lender exercises its rights under the Assignment, Olympic agrees that the Lender will have no personal obligations or liabilities under the Billing Services Agreement or the Assignment, and the sole right and remedy of Olympic as against the Lender under the Billing Services Agreement or this Agreement shall be an enforcement of Olympic's contract rights.

2. Other than for services related to Billings that have not yet been settled by the telephone companies, or related to reserves, Olympic is not currently aware of any known claim, counterclaim, right of set-off, defense or like right against the Borrower or the Lender and Olympic has been paid all amounts due for its work as of this date. Except to the extent possible under the terms of the Billing Services Agreement, Olympic agrees to make no amendments to the existing terms of the Billing Services Agreement without the prior written consent of the Lender.

3. In addition to the foregoing, Olympic agrees not to terminate, or to permit the termination of, the Billing Services Agreement and agrees not to cease to perform its work thereunder for any reason (including, but not limited to, the Borrower's failure to make any payments to Olympic) without giving written notice to the Lender of such intention to terminate or cease performing its work at least thirty (30) days prior thereto. Notwithstanding the foregoing, in the event that: 1) any of the local telephone companies ("LECs") fail to continue to remit receivables pursuant to Olympic's underlying billing and collections agreement; or 2) any of the LECs terminate their billing and collections agreement for any reason; or 3) there is a regulatory action taken against Olympic; or 4) a

00011701.11

change in regulatory policy affecting Olympic's billing services, Olympic reserves the right to terminate the Billing Services Agreement upon thirty (30) days notice to Lender.

4. Olympic shall provide the Lender, at cost, a copy of any reports or information which is or should be within Olympic's possession, custody or control regarding the Billing Services Agreement, that Olympic is required to provide to Borrower under the Billing Services Agreement, as Lender may reasonably request.

5. Borrower Account. Notwithstanding any provision to the contrary in the Billing Services Agreement, Olympic agrees to the following procedures:

a. Olympic will establish a separate segregated bank account for deposit of all amounts collected on behalf of Borrower under the Billing Services Agreement (the "*Borrower Account*"). Olympic shall have the right to draw on this account to the same extent that it had under the Billing Services Agreement prior to the execution of this instrument.

b. Any payments from third parties paid to Olympic will be transferred to the Borrower Account within seven (7) business days of its receipt by Olympic.

c. Olympic hereby grants Lender a security interest in the Borrower Account to secure its obligations to Lender under this Agreement and to Borrower under the Billing Services Agreement. Said security interest shall, however, exclude billing and collection fees and reimbursements properly payable to Olympic pursuant to the terms of the Billing Services Agreement. Olympic will execute financing statements requested by Lender evidencing its obligations hereunder.

d. The Borrower Account will be identified as "Reserve Account for the benefit of Cyberspace.com, LLC."

6. In the event the Lender exercises its rights under the Assignment, Olympic agrees to extend to the Lender any rights of indemnity which the Borrower may have against Olympic under _____ Lender and Borrower agree, jointly and severally, to indemnify and hold Olympic harmless (including reasonable attorneys fees) from any claim, suit or liability arising out of any dispute between Lender and Borrower or related to its performance hereunder.

7. Upon the occurrence of any breach of any of the Billing Services Agreement by the Borrower or any receipt by Olympic of notice from any person of any claimed breach by the Borrower of any of the Billing Services Agreement, Olympic shall promptly notify the Borrower and Lender in writing of each such breach, by certified United States mail, return receipt requested, postage prepaid, addressed as follows:

If to Borrower:

Cyberspace.com, LLC
110 West 9th Street, Suite 588

Wilmington, DE 19805

Attention: _____

Telephone: () _____

Facsimile: () _____

If to the Lender:

Electronic Publishing Ventures, LLC

Griffin Towers

6 Hutton Center, Suite 1100

Santa Ana, CA 92707

Attention: Wayne Chia

Telephone: (714) 445-0500

Facsimile: (714) 445-0510

8. This Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of New York and applicable federal law without regard to choice of law rules.

[Signature on following page.]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed and delivered by its officers hereunto duly authorized as of the date first above written.

WITNESS:

OLYMPIC TELECOMMUNICATIONS,
INC.:



By:

Name:

Title:



Ian Eisenberg

Pres

H:\WP\HOME\EPV\BSERV-cb.2

{00031701,1}

E-0024063

**AGREEMENT
AND
CONSENT TO ASSIGNMENT**

G COPY

FOR VALUE RECEIVED, the undersigned hereby acknowledges and consents to the Collateral Assignment of Billing Services Agreement dated as of July 2, 1999 by and among ESSEX ENTERPRISES, LLC, ELECTRONIC PUBLISHING VENTURES, LLC (the "Assignment") and enters into this Agreement and Consent to Assignment (this "Agreement") as of July 2, 1999. All terms defined in the Assignment are used herein with the same meanings. Olympic hereby further agrees as follows in favor of the Lender:

1. Olympic hereby consents to the foregoing Assignment and agrees to the terms thereof, notwithstanding any contrary terms in the Billing Services Agreement. Olympic agrees that, in the event that the Lender delivers written notice to Olympic that it is exercising its rights under the Assignment, Olympic shall perform for the Lender all or such portion of Olympic's obligations and undertakings under the Billing Services Agreement as Lender may direct, notwithstanding any contrary instruction, direction or request from the Borrower; provided that any outstanding defaults under the Billing Services Agreement shall be cured and Olympic receives the compensation for such performance as provided in the Billing Services Agreement. It is expressly understood that the Lender neither assumes, nor has any obligation to Olympic to exercise the Lender's rights under the Assignment or to declare an Event of Default under the Loan, but that the option to exercise such rights or declare a default rests in the sole and absolute discretion of the Lender as provided therein. In the event the Lender exercises its rights under the Assignment, Olympic agrees that the Lender will have no personal obligations or liabilities under the Billing Services Agreement or the Assignment, and the sole right and remedy of Olympic as against the Lender under the Billing Services Agreement or this Agreement shall be an enforcement of Olympic's contract rights.

2. Other than for services related to Billings that have not yet been settled by the telephone companies, or related to reserves, Olympic is not currently aware of any known claim, counterclaim, right of set-off, defense or like right against the Borrower or the Lender and Olympic has been paid all amounts due for its work as of this date. Except to the extent possible under the terms of the Billing Services Agreement, Olympic agrees to make no amendments to the existing terms of the Billing Services Agreement without the prior written consent of the Lender.

3. In addition to the foregoing, Olympic agrees not to terminate, or to permit the termination of, the Billing Services Agreement and agrees not to cease to perform its work thereunder for any reason (including, but not limited to, the Borrower's failure to make any payments to Olympic) without giving written notice to the Lender of such intention to terminate or cease performing its work at least thirty (30) days prior thereto. Notwithstanding the foregoing, in the event that: 1) any of the local telephone companies ("LECs") fail to continue to remit receivables pursuant to Olympic's underlying billing and collections agreement; or 2) any of the LECs terminate their billing and collections agreement for any reason; or 3) there is a regulatory action taken against Olympic; or 4) a

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change in regulatory policy affecting Olympic's billing services, Olympic reserves the right to terminate the Billing Services Agreement upon thirty (30) days notice to Lender.

4. Olympic shall provide the Lender, at cost, a copy of any reports or information which is or should be within Olympic's possession, custody or control regarding the Billing Services Agreement, that Olympic is required to provide to Borrower under the Billing Services Agreement, as Lender may reasonably request.

5. Borrower Account. Notwithstanding any provision to the contrary in the Billing Services Agreement, Olympic agrees to the following procedures:

a. Olympic will establish a separate segregated bank account for deposit of all amounts collected on behalf of Borrower under the Billing Services Agreement (the "Borrower Account"). Olympic shall have the right to draw on this account to the same extent that it had under the Billing Services Agreement prior to the execution of this instrument.

b. Any payments from third parties paid to Olympic will be transferred to the Borrower Account within seven (7) business days of its receipt by Olympic.

c. Olympic hereby grants Lender a security interest in the Borrower Account to secure its obligations to Lender under this Agreement and to Borrower under the Billing Services Agreement. Said security interest shall, however, exclude billing and collection fees and reimbursements properly payable to Olympic pursuant to the terms of the Billing Services Agreement. Olympic will execute financing statements requested by Lender evidencing its obligations hereunder.

d. The Borrower Account will be identified as "Reserve Account for the benefit of Cyberspace.com, LLC."

6. In the event the Lender exercises its rights under the Assignment, Olympic agrees to extend to the Lender any rights of indemnity which the Borrower may have against Olympic under the Billing Services Agreement. Lender and Borrower agree, jointly and severally, to indemnify and hold Olympic harmless (including reasonable attorneys fees) from any claim, suit or liability arising out of any dispute between Lender and Borrower or related to its performance hereunder.

7. Upon the occurrence of any breach of any of the Billing Services Agreement by the Borrower or any receipt by Olympic of notice from any person of any claimed breach by the Borrower of any of the Billing Services Agreement, Olympic shall promptly notify the Borrower and Lender in writing of each such breach, by certified United States mail, return receipt requested, postage prepaid, addressed as follows:

If to Borrower:

Essex Enterprises, LLC
1013 Centre Road

Wilmington, DE 19805

Attention: _____

Telephone: () _____

Facsimile: () _____

If to the Lender:

Electronic Publishing Ventures, LLC

Griffin Towers

6 Hutton Center, Suite 1100

Santa Ana, CA 92707

Attention: Wayne Chia

Telephone: (714) 445-0500

Facsimile: (714) 445-0510

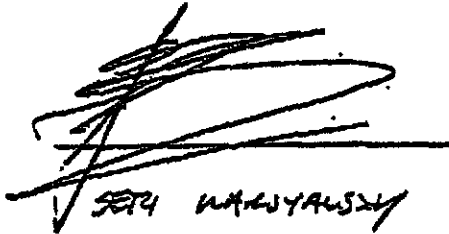
8. This Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of New York and applicable federal law without regard to choice of law rules.

[Signature on following page.]

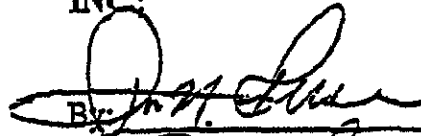


IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed and delivered by its officers hereunto duly authorized as of the date first above written.

WITNESS:


SERV NAWYALUSY

OLYMPIC TELECOMMUNICATIONS,
INC.

By: 
Name: Don M. Rosen
Title: COO

H:\WP\HOMSEPV\BSERV-cb.2

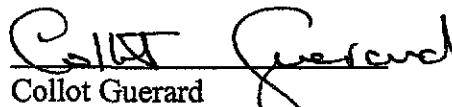
CERTIFICATE OF SERVICE

This is to certify that Plaintiff's Interrogatories to Defendant Olympic Telecommunications, Inc were served on March 19, 2002, upon counsel for the defendants as follows:

Ernest Leonard, Esq.
Friedman & Feiger
5301 Spring Valley Road, Suite 200
Dallas, TX 75254
Counsel for Chris Hebard and Coto Settlement

Jane Jacobs, Esq.
Klein, Zelman
485 Madison Avenue, 15th Floor
New York, New York 10022
Counsel for Ian Eisenberg, French Dreams, & Olympic Telecommunications

By Facsimile and Federal Express, Postage Pre-Paid


Collot Guerard
Counsel for the Plaintiff
Federal Trade Commission

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2303	
CONNECTION TEL		89727765313
SUBADDRESS		
CONNECTION ID		
ST. TIME	03/19 14:37	
USAGE T	09'01	
PGS. SENT	27	
RESULT	OK	



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Marketing Practices

Collet Guorard
Attorney

Direct Dial
202-326-3338

To: Jane Jacobs, Ernest Leonard
Fax #: 212-753-8101, 972-776-5313
Re: Revised Interrogatories to Olympic
Date: March 19, 2002

FACSIMILE

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2302	
CONNECTION TEL		82127538101
SUBADDRESS		
CONNECTION ID		
ST. TIME	03/19 14:23	
USAGE T	13'03	
PGS. SENT	27	
RESULT	OK	



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Marketing Practices

Collet Guerard
Attorney

Direct Dial
202-326-3338

To: Jane Jacobs, Ernest Leonard
Fax #: 212-753-8101, 972-776-5313
Re: Revised Interrogatories to Olypic
Date: March 19, 2002

FACSIMILE

HONORABLE ROBERT S. LASNIK

Interrog

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

vs

CYBERSPACE COM LLC, *et al.*,

Defendants

NO. C00-1806L

**RESPONSES TO FIRST SET OF
INTERROGATORIES TO
DEFENDANT OLYMPIC
TELECOMMUNICATIONS**

RESPONSE TO INTERROGATORY NUMBER ONE

Defendant objects to this interrogatory as vague, ambiguous, and overbroad Defendant is not able to answer this because to determine what every database does and how it is used would require over 72 hours of review of code, most of which is currently unavailable, by experienced programmers It would be difficult, time consuming, and expensive

RESPONSE TO INTERROGATORY NUMBER TWO

Defendant objects to this interrogatory as vague, ambiguous, and overbroad Defendant is not able to answer this because to determine what every database does and how it is used would require over 72 hours of review of code, most of which is currently unavailable by experienced programmers It would be difficult, time consuming, and expensive Without waiving said objection, defendant responds as follows Olympic created a number of reports including unbillable/reject reports, recourse reports, BIC/LEC adjustment reports

RESPONSE TO INTERROGATORY NUMBER THREE

Defendant objects to this interrogatory as vague, ambiguous, and overbroad Defendant is unable

to respond to this interrogatory because it is simply too vague. If Plaintiff further identifies what specific reports, and/or which of the business activities of the four subsidiaries the interrogatory is directed to, then defendant might be able to provide additional information

RESPONSE TO INTERROGATORY NUMBER FOUR

Defendant objects to this interrogatory as vague, ambiguous, and overbroad. Defendant is unable to provide the responsive information to this interrogatory because the interrogatory requests information which was contained in written comments to the database in which csr's wrote concerning persons who called concerning the services provided. In order to answer this interrogatory Olympic would be required to hire persons to review thousands of entries in a specific field of a computer program. Such a requirement is overly burdensome especially in light of the fact that Defendant has previously provided the database, and the information requested is equally available to Plaintiff by review of the database.

RESPONSE TO INTERROGATORY NUMBER FIVE

Cyberspace 2/15/99 -9/22/00

Essex 12/09/98- 7/7/00

Surfnet 8/15/98 - 7/7/00

Splashnet - Olympic is unable to answer the interrogatory as to this entity, as Olympic did not perform billing for Splashnet

RESPONSE TO INTERROGATORY NUMBER SIX

Cyberspace 228,704

Essex 18,602

Surfnet 20,714

Splashnet - Olympic is unable to answer the interrogatory as to this entity, as Olympic did not perform billing for Splashnet

RESPONSE TO INTERROGATORY NUMBER SEVEN

Cyberspace \$26,248,929.58

1999 571,838 \$13,941,505 61

2000 451,952 \$12,307,423 97

Essex (YP com) \$1,889,604 15

Surfnet \$1,179,504 66

Splashnet - Olympic is unable to answer the interrogatory as to this entity, as Olympic did not perform billing for Splashnet

RESPONSE TO INTERROGATORY NUMBER EIGHT.

Defendant objects to this interrogatory as vague, overbroad and burdensome Refunds were provided by the individual entities, by Pinnacle, by Integretel, and by the LECs It would take a team of people to reconstruct this information. In addition, much of the requested information is not within the control of defendant, but rather in the control of other entities, such as the LECs

RESPONSE TO INTERROGATORY NUMBER NINE

Defendant objects to this interrogatory as vague, overbroad and burdensome. Refunds were provided by the individual entities, by Pinnacle, by Integretel, and by the LECs It would take a team of people to reconstruct this information In addition, much of the requested information is not within the control of defendant, but rather in the control of other entities, such as the LECs

RESPONSE TO INTERROGATORY NUMBER TEN

Defendant objects to this interrogatory as vague, overbroad and burdensome In order to separate what refunds were provided by whom, defendant would need to hire a team of people to reconstruct this information Defendants provided Plaintiffs with the database at issue The information of which is equally available to them

RESPONSE TO INTERROGATORY NUMBER ELEVEN

Cyberspace \$1,228,225 20

Yellow-Pages Com \$13,486 20

Surfnet \$150,147 89

Splashnet - Olympic is unable to answer the interrogatory as to this entity, as Olympic did not perform billing for Splashnet

RESPONSE TO INTERROGATORY NUMBER TWELVE

Cyberspace \$1,268,318 24

Essex \$448,883 47

Surfnet \$22,241,47

Splashnet - Olympic is unable to answer the interrogatory as to this entity, as Olympic did not

1 perform billing for Splashnet

2 These figures reflect data received from the LECS and Billing Concepts up until the entities
3 stopped sending adjustment data. In addition it fails to reflect changes which might have occurred
4 after defendant stopped processing the data

5 RESPONSE TO INTERROGATORY NUMBER THIRTEEN

6 Throughout the time period during which the EPV subsidiaries operated Mr. Don Reese routinely
7 dealt with issues raised by the LECs concerning billing. As was common throughout the industry
8 at the time, various LEC's would require that Mr. Reese provide action plans to address issues
9 they perceived as problems, and for which they might have temporarily suspended placement of
10 charges on telephone bills. Other than being aware that Mr. Reese regularly addressed these
11 issues, there is no specific list of when such actions took place by the LECs and what actions Mr.
12 Reese took to address the problem.

13 RESPONSE TO INTERROGATORY NUMBER FOURTEEN

14 Defendant objects to this interrogatory as being overbroad. Defendant is unable, without
15 spending hundreds of hours, for which it would likely have to hire outside personnel with
16 specialized training, to determine the exact origin of the information identified in the data dump.
17 Without waiving said objections, defendant responds as follows. The information contained in the
18 thirteen data dump files represents an exact duplicate of that which was contained in the MS SQL
19 7.0 database system, which drove the Customer Support department.

20 RESPONSE TO INTERROGATORY NUMBER FIFTEEN

21 Defendant objects to this interrogator as being overbroad, and burdensome. Defendant does not
22 have any information concerning the contents of the fields identified in the interrogatory and is
23 unable to respond without spending hundreds of hours of specially trained personnel investigating
24 the matter.

25 RESPONSE TO INTERROGATORY NUMBER SIXTEEN

26 Don Reese, all customer service representatives, all accounting department personnel, all Pinnacle
27 personnel involved in providing customer service, all outsourced customer service personnel.

28 RESPONSE TO INTERROGATORY NUMBER SEVENTEEN

All persons with access could both read and write to the records.

1 RESPONSE TO INTERROGATORY NUMBER EIGHTEEN

2 Defendant objects to this interrogatory as vague, ambiguous, overbroad and burdensome.

3 Defendant is unable to respond to this interrogatory because the interrogatory asks for reports
4 which would not have been created by companies under the control of Olympic, and Olympic
5 would have no information concerning the nature of such reports In addition it would take
6 significant resources to do the research to respond to this interrogatory


7 RESPONSE TO INTERROGATORY NUMBER NINETEEN.

8 All subsidiaries except Splashnet which was billed through Integretel .

9 RESPONSE TO INTERROGATORY NUMBER TWENTY

10 Defendant objects to this interrogatory as calling for attorney client and work product doctrine
11 protected information

12 Dated April 2, 2002


Kathryn S. Diemer, Esq
Campeau Goodsell Diemer, L C
Attorneys for Defendant Olympic

PROSIDING OFFICIAL COPY

OFFICIAL TRANSCRIPT PROCEEDING
UNITED STATES DISTRICT COURT
FOR THE SOUTHWESTERN DISTRICT OF WASHINGTON

MATTER NO. X010009 CIVIL NO. C00-1806-L

TITLE FTC v. CYBERSPACE.COM, LLC, ET AL.

**PLACE FEDERAL TRADE COMMISSION
915 SECOND AVENUE, SUITE 2896
SEATTLE, WASHINGTON**

DATE FEBRUARY 7, 2002

PAGES 1 THROUGH 137

COURT DEPOSITION OF LIA YAGELOWICH

**FOR THE RECORD, INC.
603 POST OFFICE ROAD, SUITE 309
WALDORF, MARYLAND 20602
(301)870-8025**

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WASHINGTON

3 FEDERAL TRADE COMMISSION,)
4 Plaintiff,)
5 v.) Case No. C00-1806-L
6 CYBERSPACE.COM, LLC,)
7 FRENCH DREAMS,)
8 COTO SETTLEMENT,)
9 Electronic Publishing Ventures, LLC,)
Olympic Telecommunications, INC.,)
IAN EISENBERG,)
and)
CHRIS HEBARD,)
Defendants.)

10
11
12
13
14
15 Thursday, February 7, 2002

16 909 First Avenue
17 Suite 90
18 Seattle, Washington
19
20
21
22

23 The above-entitled matter came on for deposition
24 pursuant to notice, at 9:00 a.m.
25

For The Record, Inc.
Waldorf, Maryland
(301) 870-8025

1 APPEARANCES:

2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

3 Mr. Michael A. Goodman, Attorney
4 Ms. Collot Guerard, Attorney
5 600 Pennsylvania Avenue NW
6 Washington, DC 20580
7 (202) 326-3071

8 ON BEHALF OF THE DEPONENT:

9 Kathryn S. Diemer, Attorney
10 Campeau Goodsell Diemer
11 38 W. Santa Clara Street
12 San Jose, CA 95113
13 (408) 295-9555

14 ON BEHALF OF CHRIS HEBARD:

15 Mr. Ernest Leonard, Attorney
16 Friedman & Feiger
17 5301 Spring Valley Road, Suite 200
18 Dallas, TX 75240
19 (972) 788-1400

20 ALSO PRESENT:

21 Mr. Ian Eisenberg
22
23
24
25

1 P R O C E E D I N G S

2 (The witness was duly sworn.)

3 LIA YEGELOWICH

4 having been first duly sworn, was examined and testified as
5 follows:

6 EXAMINATION

7 BY MS. GUERARD:

8 Q. Could you state your name for the record, please.

9 A. My name is Lia, spelled L-I-A. Last name is
10 Yagelowich, spelled Y-A-G-E-L-O-W-I-C-H.

11 Q. Ms. Yagelowich, my name is Collot Guerard. I'm an
12 attorney for the Federal Trade Commission. I will be asking
13 you questions, and the reporter is going to be taking down my
14 questions and your answers. Okay?

15 A. Okay.

16 Q. To make it easier for the reporter, do you agree to
17 let me finish asking my questions before you start answering
18 the question?

19 A. Okay.

20 Q. Because she can only take down verbal answers, try
21 to answer verbally. Don't shake your head or nod your head.
22 Okay?

23 A. Okay.

24 Q. Do you agree that if you don't understand a
25 question, you will ask me to repeat or to rephrase it?

1 A. I don't remember.

2 Q. Do you know whether you have been employed by
3 French Dreams?

4 A. No.

5 Q. Have you heard of the company French Dreams?

6 A. Yes.

7 Q. What is your understanding of what that company is?

8 A. What do you mean, "understanding"?

9 Q. What is French Dreams?

10 A. It's a company.

11 Q. What does it do?

12 A. I don't know too much about it.

13 Q. What do you know about it?

14 A. It's just a company.

15 Q. Who owns the company?

16 A. Mr. Eisenberg.

17 Q. Were you ever employed by French Dreams?

18 A. No.

19 (Exhibit Number 166 was marked for
20 identification.)

21 BY MS. GUERARD:

22 Q. I'm showing you an affidavit that is marked Exhibit
23 166. I'll let you read the whole affidavit, but could you
24 first of all look at Page 2 of the affidavit. Do you
25 recognize that signature?

1 A. Yeah, it look like my signature.

2 Q. Is that your signature?

3 A. I guess.

4 Q. You can read the whole document, but I particularly
5 want you to read Paragraph 1 of Page 1. Can you read for the
6 record what it says, the first sentence?

7 MS. DIEMER: Have you had an opportunity to
8 read the document?

9 THE WITNESS: No, I haven't.

10 Q. Please read the document.

11 A. (Reading document.) Can I talk?

12 Q. Sure.

13 (Pause in the proceeding.)

14

15 Q. Have you had an opportunity to talk to your lawyer?

16 A. Yes.

17 Q. Have you had an opportunity to review the exhibit
18 that's marked 166? Have you been able to read the exhibit
19 that's marked 166?

20 A. Yes, I read it.

21 Q. Do you see the statement, "I am employed by French
22 Dreams"?

23 A. Yes, I saw that.

24 Q. Did you sign this declaration?

25 A. I might have.

1 Q. Well, if you didn't sign it, did somebody else sign
2 it?

3 A. It's definitely my signature.

4 Q. Did you understand the declaration when you signed
5 it?

6 A. No.

7 Q. Did you write this declaration?

8 A. No.

9 MS. DIEMER: Objection -- Lia -- Objection.
10 Don't answer that question. Who writes a declaration is
11 totally within the attorney-client privilege. It's an
12 inappropriate question.

13 Q. Was the declaration accurate when you signed it?

14 A. I don't know.

15 Q. At the time you signed the declaration, were you
16 employed by French Dreams?

17 A. No.

18 Q. Why did you sign a declaration saying you were
19 employed by French Dreams if that was inaccurate?

20 A. I don't know.

21 Q. Do you recognize the name Electronic Publishing
22 Ventures?

23 A. What do you mean, "recognize"?

24 Q. Have you seen the name Electronic Publishing
25 Ventures before, EPV?

1 Q. You're on the second floor. Okay.

2 A. On the second floor now.

3 Q. So you are on the same floor as Mr. Eisenberg?

4 A. Now?

5 Q. Yes.

6 A. Yes.

7 Q. Do you know whether you were an officer of any of
8 Mr. Eisenberg's companies?

9 A. Just Mr. Eisenberg company?

10 Q. Well, any companies that are affiliated with
11 Mr. Eisenberg.

12 A. An officer. The only one I know is I was the
13 president one time. That's all.

14 Q. Do you know who Don Reese is? You know he is a
15 man, but do you know Don Reese?

16 A. Don Reese?

17 Q. Yes.

18 A. Yeah.

19 Q. Where did he used to work?

20 A. Payroll Masters.

21 Q. Did he work for any of Mr. Eisenberg's other
22 companies?

23 A. (Shaking head negatively.)

24 Q. What did Don Reese do at the Eastlake facility?

25 A. I don't know.

1 Q. Did you ever talk with Don Reese?

2 A. Yes.

3 Q. This is an exhibit that was marked in a previous
4 deposition. It is Exhibit 113. It's Bates-stamped E-20368
5 through 20360.

6 MS. DIEMER: This is one of the ones that has
7 nonconsecutive numbering, isn't it?

8 MS. GUERARD: I think so.

9 MS. DIEMER: So it's E-0020368, and E-0020365,
10 E-0023964 and E-0020360.

11 Q. If you could, turn to the second page, which is
12 20365. Do you have that page in front of you?

13 A. E-0020365?

14 Q. Yes.

15 A. Yes.

16 Q. Could you read that page to yourself.

17 A. (Reading document.)

18 Q. Did you participate in a board of directors meeting
19 for Olympic Telcom on October 14th, if you remember?

20 A. I don't remember. I might be.

21 Q. Did you become assistant secretary of Olympic
22 Telcom?

23 A. It said on the paper.

24 Q. Before you saw this paper, did you know that you
25 were an assistant secretary of Olympic?

1 A. I don't remember.

2 Q. So you don't know whether you were, before seeing
3 this?

4 A. (Nodding head affirmatively.)

5 Q. Did you have any duties as the assistant secretary
6 of Olympic Telecommunications?

7 A. What kind of duties?

8 Q. I don't know. I'm asking you. Did you do anything
9 as assistant secretary of Olympic Telcom?

10 A. I don't remember. I don't think so.

11 Q. Do you know whether you were -- you said were
12 president of a company. What company were you president of?

13 A. Cyberspace.

14 Q. Do you know if you were ever a secretary of
15 Cyberspace?

16 A. No, I don't.

17 Q. Were you told that you were secretary of
18 Cyberspace?

19 A. I don't remember.

20 Q. I'm going to show you what is marked as Exhibit
21 143. For the record it's a Corporate Resolution,
22 Cyberspace.com. It is Bates-stamped H-5006 through 5007. Do
23 you have the document in front of you?

24 A. Yes.

25 MS. DIEMER: I just want for the record to

1 point out that this is the document where we have some
2 concerns about why it's stamped weirdly and there seems to be
3 parts cut off and issues about the document itself, which you
4 have very clearly said in previous depositions that you have
5 no idea if the original is like that either.

6 MS. GUERARD: Right.

7 Q. Would you like to read this document because I want
8 to ask you some questions about it. Okay?

9 A. Yes. (Reading document.)

10 Q. Did you know, prior to reading this document, that
11 you were the secretary of Cyberspace?

12 A. I don't remember.

13 Q. Is that your signature that's on Page 5007?

14 A. You mean 8005007?

15 Q. Correct.

16 A. I see this number.

17 Q. We are just using the H numbers.

18 A. Okay. Yeah.

19 Q. Did you type this document?

20 A. I don't remember.

21 Q. Did you attend a board of directors meeting on
22 October 16th, 1998?

23 A. I don't remember. I might.

24 Q. What did you do as secretary for Cyberspace, if
25 anything?

1 A. I don't remember.

2 Q. Do you remember when you became president of
3 Cyberspace?

4 A. When?

5 Q. Yes.

6 A. No, I do not recall.

7 Q. Do you think it was sometime in June or July of
8 1999?

9 A. I don't remember at all.

10 Q. Who asked you to be president of Cyberspace?

11 A. Who asked me? I don't know, actually.

12 Q. What were you told you would be doing as president
13 of Cyberspace?

14 A. What I was told?

15 Q. What were you told that you would do as president
16 of Cyberspace?

17 A. I don't think anybody told me anything.

18 Q. Did you do anything as president of Cyberspace?

19 A. I don't know.

20 Q. What do you recall doing as president of
21 Cyberspace? Maybe you did nothing, but I'm just asking you.

22 A. I don't know.

23 Q. You don't recall doing anything?

24 MS. DIEMER: I think that misstates what she
25 just said.

1 Q. What do you remember doing as president of
2 Cyberspace?

3 A. I don't remember.

4 Q. I want to try and figure out when you became
5 president of Cyberspace, so I'm going to show you a document
6 to see if that helps refresh your recollection. Maybe it
7 will, and maybe it won't.

8 (Exhibit Number 167 was marked for
9 identification.)
10

11 MR. LEONARD: Apparently this was
12 inadvertently produced. It appears to be an e-mail from Gene
13 Hirai. It's a communication with an Arent Fox attorney. I'm
14 going to object to this document being used in this
15 deposition, any questions being asked about it.

16 MS. GUERARD: Also this was produced by the
17 Hebard defendants, your clients, and you never produced a
18 privilege log.

19 MR. LEONARD: I understand. If it was
20 produced, like your Bates labeled it is, that is in fact true
21 that it was produced inadvertently.

22 MS. DIEMER: I would join in the
23 attorney-client privilege and work-product doctrine
24 objection.

25 Q. Does this document refresh your recollection as to

1 when you became president of Cyberspace?

2 A. No, it does not.

3 Q. Did you read it?

4 A. No, I have not.

5 Q. Why don't you just read it and see if it refreshes
6 your recollection. I should state for the record that this
7 is an e-mail -- printout of an e-mail, an e-mail exchange
8 dated June 21st, 1999.

9 A. (Reading document.)

10 MR. LEONARD: I object again that this is a
11 privileged communication. It looks like it's my client's
12 privilege. I'm going to request -- although I can't instruct
13 -- but I'm going to request that this witness not answer
14 questions regarding this document.

15 MS. DIEMER: I believe that it is
16 inappropriate to have the witness answer questions about
17 attorney-client-privileged communications, even if
18 inadvertently provided in this matter, and I instruct the
19 witness not to answer based on the attorney-client privilege.

20 Q. Ms. Yagelowich, aside from this document, do you
21 have any independent recollection of when you became
22 president of Cyberspace?

23 A. No, I don't.

24 Q. Do you know how long you were president of
25 Cyberspace?

1 A. No, I don't.

2 Q. Do you know how much you were paid as president of
3 Cyberspace?

4 MS. DIEMER: I have to say that I object to
5 that question on the basis that it is an inappropriate
6 invasion of her personal privacy. Is there some reason that
7 you need to know that piece of information that would
8 overcome the personal-privacy objection?

9 MS. GUERARD: That she is being paid as an
10 officer of a company that the FTC has sued.

11 MS. DIEMER: That she is being paid, yes. How
12 much she is being paid, no.

13 MS. GUERARD: Well, I believe there are
14 documents in here that indicate that she was paid \$15,000. I
15 was trying to see if I could get some other way of refreshing
16 her recollection because if she recalls that she was paid
17 \$15,000 on two different dates, then that might help her
18 recall when she became president of Cyberspace.

19 MS. DIEMER: Right, but the problem is how
20 much somebody makes is specifically very private information
21 that's not usually available and shouldn't be in a public
22 record. If you want to ask her if she remembers if she was
23 paid, that's fine, but I don't know if she needs to answer
24 how much she was making.

25 MS. GUERARD: I'm not asking how much she was

1 making generally; just as president of Cyberspace.

2 MS. DIEMER: I think that the protection --
3 actually the consumer-protection laws, throughout the 9th
4 Circuit and particularly in Washington and California,
5 specifically prohibit questions about that type of private
6 information, confidential, personal information unless it's
7 very germane to the case. I don't see that you have given me
8 a reason that's particularly germane that's going to lead to
9 discovery that's sufficient to invade her personal privacy in
10 that manner.

11 MS. GUERARD: No, I respectfully disagree with
12 you.

13 (Exhibit Number 168 was marked for
14 identification.)

15 BY MS. GUERARD:

16 Q. For the record I show you an exhibit that is marked
17 168. It is DR-6333, and it appears to be a printout of an
18 e-mail exchange dated July 1st, 1999.

19 Could you look at this read the document and
20 see if it refreshes your recollection as to when you became
21 president of Cyberspace.

22 A. (Reading document.)

23 Q. When you finish reading the document, look at me.
24 That way I'll know you are finished. Take your time.

25 A. I'm almost done. (Reading document.)

1 Q. Did you finish reading the document?

2 A. Yes.

3 Q. Does this remind you as to when you became
4 president of Cyberspace?

5 A. No.

6 Q. The fact that you were going to be paid on July
7 1st, '99, doesn't remind you?

8 A. No, I don't remember.

9 Q. Did you ever stop being president of Cyberspace?

10 A. I think so.

11 Q. Did you resign?

12 A. I don't remember resigning.

13 Q. Why did you stop being president of Cyberspace?

14 A. It's been a long time. I don't remember.

15 Q. That's all right. I'm showing you for the record a
16 document that's marked Exhibit 54. It is E-24069 through
17 E-24073. It's entitled, "Collateral Assignment of Billing
18 Services Agreement." It appears to be dated on the front
19 page as November 1st, 1998.

20 You are welcome to read this whole document.
21 You don't need to read the whole document. I think I can ask
22 you some questions about the document, but if you want to
23 read it, you can.

24 A. I would love to read it because I do not remember.

25 Q. Now, could I just ask you one question?

1 A. Yeah.

2 Q. If you go to E-24073, do you recognize your
3 signature on that page?

4 A. Yes.

5 Q. Do you see the word "President" under there?

6 A. Yes.

7 Q. Do you know what you were president of when you
8 signed this document?

9 A. I don't know.

10 Q. Do you have any recollection of signing this
11 document?

12 MS. DIEMER: Do you need to read it?

13 THE WITNESS: I want to read it first. It's
14 been a long time. I don't remember. (Reading document.)

15 Q. Ms. Yagelowich, this document makes reference to a
16 promissory note. Would it help you if you saw the promissory
17 note? I'm not going to be asking you questions about the
18 document. This makes reference to a promissory note on
19 24069.

20 If it would help you in your reading to see
21 that promissory note, I'm delighted to give it to you.

22 A. Sure.

23 Q. I'll hand the witness what is marked as Exhibit 58.
24 It's E-23911 through 23914. If you could look at that
25 exhibit and particularly at Page 23913, is that your

1 Q. Who is John Gravenkamper?

2 A. I don't know.

3 Q. Did you ever meet him?

4 A. I don't think so.

5 Q. Do you know if he was a friend of Mr. Eisenberg's?

6 A. I don't know.

7 Q. I'm going to show you a document to see if it
8 refreshes your recollection as to when you stopped being
9 president of Cyberspace.

10 (Exhibit Number 169 was marked for
11 identification.)

12 BY MS. GUERARD:

13 Q. Did you get a chance to look at Exhibit 169, which
14 for the record is Bates-stamped E-25037 and is entitled,
15 "Minutes of Special Board of Directors Meeting of
16 Cyberspace.com"? If you could look at the document and then
17 look up at me and let me know when you are finished reading
18 it.

19 A. (Reading document.) Okay.

20 Q. Does this refresh your recollection as to when you
21 stopped being president of Cyberspace?

22 A. No, it doesn't.

23 Q. Did you sign this document?

24 A. It has my signature.

25 Q. At the time you signed it, were you secretary of

1 Cyberspace?

2 A. I guess so.

3 Q. Did you know that you were secretary of Cyberspace?

4 A. Did I know? I don't remember.

5 Q. Do you remember signing any contracts on behalf of
6 Cyberspace as president of Cyberspace?

7 A. I don't know.

8 Q. You don't know, or you don't remember?

9 A. I don't remember.

10 Q. Do you remember signing any responses to attorney
11 generals, state attorney generals, on behalf of Cyberspace?

12 A. I don't know.

13 Q. You don't remember, or you don't know if you did?

14 A. I don't know if I did.

15 Q. Do you remember signing any credit applications for
16 Cyberspace?

17 A. Credit applications?

18 MS. DIEMER: Do you understand what
19 Ms. Guerard means?

20 THE WITNESS: I don't know. Credit
21 applications? I'm trying to figure out what "credit
22 applications" --

23 Q. Well, an application to get credit from a company.
24 Do you remember signing any credit applications for
25 Cyberspace?

1 Q. If somebody asks you to sign documents, do you
2 normally sign them?

3 A. Probably.

4 Q. I show you what has been previously marked as
5 Exhibit 145. It's also H-5292, and it's an application for
6 employer identification number on behalf of Electronic
7 Publishing Ventures. Do you have the document in front of
8 you?

9 A. Yes.

10 Q. Do you recognize this document?

11 MS. DIEMER: Do you need to look at it?

12 THE WITNESS: Yes. (Reading document.) Can
13 you tell me what it says?

14 Q. On 17C?

15 A. Yeah.

16 Q. It looks to me like it's "9/25/98." And then it
17 says, "City and state where filed." It looks like "UT,"
18 which stands for Utah. Then underneath -- next to that it
19 says, "91, 1929168" -- or "9." One of those two.

20 MS. DIEMER: Or 3. Mine looks more like a 3.

21 THE WITNESS: This is for -- okay.

22 Q. Looking at 145, do you recognize the signature
23 that's in the lower left-hand corner?

24 A. Do I recognize that?

25 Q. Yes. The signature here.

1 A. Yes.

2 Q. Is that your signature?

3 A. It look like it.

4 Q. At the time you signed this document, were you
5 secretary of Electronic Publishing Ventures?

6 A. I don't remember.

7 Q. At the time you signed this document, was
8 Electronic Publishing Ventures located at 2722 Eastlake
9 Avenue?

10 A. I don't know.

11 Q. Did you sign this document on October 21st, 1998?

12 MS. DIEMER: Objection. Assumes facts not in
13 evidence.

14 THE WITNESS: I don't know. It said over
15 there in document.

16 Q. It says the date? Is that your handwriting next to
17 the date?

18 A. I'm not sure actually.

19 Q. What about the printed "Lia Yagelowich, Secretary"
20 above your signature?

21 A. I think that's my handwriting. I cannot tell.
22 It's not clear.

23 Q. Do you know whether you signed any billing service
24 agreements on behalf of Cyberspace?

25 A. I don't remember.

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: Case No. C00-1806-L

CASE TITLE: Federal Trade Commission v. Cyberspace.com,
LLC., et al.

DATE: February 7, 2002

I HEREBY CERTIFY that the transcript contained
herein is a full and accurate transcript of the notes taken
by me at the deposition on the above cause to the best of my
knowledge and belief.

DATED: February 13, 2002

A handwritten signature in cursive script, reading "Toni L. Ziomas".

Toni L. Ziomas, C.S.R.

PRESIDING OFFICIAL COPY

OFFICIAL TRANSCRIPT PROCEEDING
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

MATTER NO. X010009 CIVIL NO. C00-1806-L

TITLE FTC v. CYBERSPACE.COM, LLC, ET AL.

PLACE FEDERAL TRADE COMMISSION
915 SECOND AVENUE
SUITE 2896
SEATTLE, WASHINGTON

DATE FEBRUARY 4, 2002

PAGES 1 THROUGH 209

COURT DEPOSITION OF CHRIS HEBARD

FOR THE RECORD, INC.
603 POST OFFICE ROAD, SUITE 309
WALDORF, MARYLAND 20602
(301)870-8025

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WASHINGTON

3 FEDERAL TRADE COMMISSION,)
4 Plaintiff,)
5 v.) Case No. C00-1806-L
6 CYBERSPACE.COM, LLC,)
7 FRENCH DREAMS,)
8 COTO SETTLEMENT,)
9 ELECTRONIC PUBLISHING VENTURES, LLC,)
OLYMPIC TELECOMMUNICATIONS, INC.,)
IAN EISENBERG,)
and)
CHRIS HEBARD,)
Defendants.)

10
11
12
13
14
15
16
17 Monday, February 4, 2002

18
19 915 Second Avenue
20 Suite 2896
21 Seattle, Washington

22
23
24 The above-entitled matter came on for deposition
25 pursuant to notice, at 9:00 a.m.

For The Record, Inc.
Waldorf, Maryland
(301) 870-8025

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16 ALSO PRESENT:
17 Mr. Ian Eisenberg
18
19
20
21
22
23
24
25

1 P R O C E E D I N G S

2 (The witness was duly sworn.)

3 CHRIS HEBARD

4 having been first duly sworn, was examined and testified as
5 follows:

6 EXAMINATION

7

8 MS. GUERARD: This is a deposition pursuant to
9 federal rules of civil procedure for all purposes allowed
10 under those rules, and all objections except as to the form
11 of the question are preserved, if that's acceptable to
12 counsel.

13 MR. LEONARD: And responsiveness.

14 BY MS. GUERARD:

15 Q. Mr. Hebard, would you state your name, your Social
16 Security number, your date of birth, your current residence
17 and office address, please, for the record.

18 A. My name is Christopher Hebard. Do you want me to
19 spell that?

20 Q. No.

21 A. My Social Security number is 174-42-3047. My place
22 of residence is 3433 Colony Plaza, Newport Beach, California.
23 I have no office any longer.

24 Q. Date of birth?

25 A. October 28th, 1952.

1 Q. What does "build a portal" mean?

2 A. A Web portal where people would visit and then buy
3 other products through other places.

4 Q. Were you also interested in increasing usage
5 because you were trying to sell the company?

6 A. Well, the issue of Internet usage came up in some
7 of the discussions that we had with prospects of buying the
8 company.

9 Q. Were some of those prospects concerned that there
10 was very low usage of the service in relation to the number
11 of people that were being billed?

12 MS. JACOBS: Object to the form of the
13 question on vagueness and assumes facts not in evidence.

14 Q. You can go ahead and answer the question.

15 A. When this issue came to our attention while we were
16 being looked at for an acquisition, we did spend some time
17 trying to understand better what the usage numbers were for
18 us and within the industry.

19 Q. Prior to this time, did you not really care whether
20 people were using your service?

21 A. No. I mean prior to this time, like any other
22 vendor bill, the bills for MegaPOP seemed quite large, and
23 that was about as far as I had looked at it.

24 Q. Did you review the invoices for MegaPOP?

25 A. No.

1 Q. How do you know the bills for MegaPOP were quite
2 large?

3 A. Well, I mean I would know by looking at a sheet as
4 to what bills were being paid, what the total dollars were
5 being paid by vendor.

6 Q. Was MegaPOP the Internet service provider you were
7 using to offer the service to Cyberspace, Splash, and Surfn
8 customers?

9 A. Ultimately, yes. Not initially.

10 Q. Initially was it Interlync?

11 A. Yes.

12 (Exhibit Number 79 was marked for
13 identification.)

14 BY MS. GUERARD:

15 Q. I show you a document which is marked 79-Hebard.
16 It's Bates-stamped DR-6693. It appears to be a series of
17 e-mails dated between February 20th and February 22nd.

18 I would like you to focus on the middle part.
19 Do you recognize what this e-mail is talking about?

20 A. It appears to be talking about the Cyberspace CD.

21 Q. What is the Cyberspace CD?

22 A. It's the fulfillment CD that allows you to
23 configure your computer to access the Internet.

24 Q. Is it saying that there were 4,271 CDs that were
25 sent to the mailing house but that there was zero usage?

1 Q. My question is: Did you ever put the statement
2 that is on the back of the check on the front of the check?
3 I believe your answer is no.

4 A. If you are asking whether or not the endorsement
5 paragraph ever was put on the front of the check --

6 Q. Was ever put on the front of the check.

7 A. I'm sure that it would not be. It would not be
8 logical for it to be there.

9 Q. Well, were the terms of the offer put on the front
10 of the check?

11 A. The terms of the offer on at least some of the
12 promotions, if not all of them, were on the stub of the check
13 as well as on an additional insert.

14 Q. Now, isn't it correct that the terms of the offer
15 were on the back of the stub and not on the front of the
16 stub?

17 A. Yes, it would be in the same place where all the
18 information pertaining to the promotion and the endorsement,
19 which was an agreement for services, was all located in the
20 same place.

21 Q. And that was on the back of the check or on the
22 back of the stub?

23 A. Correct.

24 Q. Did you ever consider putting the terms and
25 agreement on the front of the stub?

1 A. Well, I think we put things like Internet services
2 offer was one of the approaches we used at one time. We used
3 different -- we had different copy disclosures that were
4 either tested or continued based upon what counsel was
5 suggesting to us at that time.

6 Q. Mr. Hebard, did you ever put the terms of the offer
7 on the front of the check stub?

8 A. No, I don't believe so.

9 Q. You indicated, I believe, that your organization
10 was responsible for providing responses to written inquiries;
11 is that correct?

12 A. Intercon would have provided responses.

13 Q. And you previously testified Intercon was your
14 company, correct?

15 A. Yes, it was mine.

16 Q. How did the written inquiries get to your office?
17 Did some of them come from Olympic?

18 A. Some of them could have come from Olympic.

19 Q. Do you know whether one of the kinds of
20 complaints -- now, I'm talking about the written complaints,
21 not the telephone complaints -- one of the kinds of written
22 complaints that were received by your office and to which
23 your office responded concerned consumers who thought the
24 solicitation check was some kind of a refund or a rebate?

25 A. I would assume so.

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: Case No. C00-1806-L

CASE TITLE: Federal Trade Commission v. Cyberspace.com,
LLC., et al.

DATE: February 4, 2002

I HEREBY CERTIFY that the transcript contained
herein is a full and accurate transcript of the notes taken
by me at the deposition on the above cause to the best of my
knowledge and belief.

DATED: February 13, 2002


Toni L. Thomas, C.S.R.

PRESIDING OFFICIAL COPY

OFFICIAL TRANSCRIPT PROCEEDING
UNITED STATES DISTRICT COURT
FOR THE SOUTHWESTERN DISTRICT OF WASHINGTON

MATTER NO. X010009 CIVIL NO. C00-1806-L

TITLE FTC v. CYBERSPACE.COM, LLC, ET AL.

PLACE 915 SECOND AVENUE
SUITE 2896
SEATTLE, WASHINGTON

DATE FEBRUARY 6, 2002

PAGES 11 1 THROUGH 227

COURT DEPOSITION OF IAN EISENBERG
(ON HIS OWN BEHALF)

FOR THE RECORD, INC.
603 POST OFFICE ROAD, SUITE 309
WALDORF, MARYLAND 20602
(301)870-8025

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
FEDERAL TRADE COMMISSION,)
Plaintiff,)
vs.) Case No. C00-1806-L
CYBERSPACE.COM, LLC,)
FRENCH DREAMS,)
COTO SETTLEMENT,)
ELECTRONIC PUBLISHING)
VENTURES, LLC,)
OLYMPIC TELECOMMUNICATIONS,)
INC.,)
IAN EISENBERG,)
and)
CHRIS HEBARD,)
Defendants.)

Wednesday, February 6, 2002

915 Second Avenue
Suite 2896
Seattle, Washington

The above-entitled matter came on for deposition
pursuant to notice, at 9:00 a.m.

For the Record, Inc.
Waldorf, Maryland
(301) 870-8025

1 APPEARANCES:

2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

3 Ms. Collot Guerard
4 Mr. Michael A. Goodman
5 Federal Trade Commission
6 Bureau of Consumer Protection
7 600 Pennsylvania Avenue., NW
8 Washington, DC 20580

6 ON BEHALF OF THE EISENBERG DEFENDANTS:

7 Ms. Jane B. Jacobs
8 Klein, Zelman, Rothermel & Dichter
9 485 Madison Avenue
10 New York, New York, 10022
11 (212) 935-6020

12 Ms. Kathryn S. Diemer
13 Campeau Goodsell Diemer
14 38 West Santa Clara Street
15 San Jose, California 95133
16 (408) 295-9555

13 ON BEHALF OF CHRIS HEBARD:

14 Mr. Ernest Leonard
15 Friedman & Feiger
16 5301 Spring Valley Road 200
17 Dallas, Texas 75240
18 (972) 788-1400

21
22
23
24
25

For the Record, Inc.
Waldorf, Maryland
(301) 870-8025

1

2

P R O C E E D I N G S

(9:00 a.m.)

3

(The witness was duly sworn.)

4

IAN EISENBERG

5

having been first duly sworn, was examined and

6

testified as follows:

7

EXAMINATION

8

BY MS. GUERARD:

9

10 BY MS. GUERARD:

11

Q This is a deposition of defendant Ian

12

Eisenberg under the Federal Rules of Civil Procedure

13

for all purposes allowed by those rules. All

14

objections except as to the form of the question are

15

reserved if that's acceptable to counsel.

16

MS. JACOBS: Yes.

17

MR. LEONARD: And the responsiveness of the

18

answer. And I don't know, did we make that stipulation

19

yesterday in the beginning of the deposition?

20

MS. GUERARD: I'm not certain.

21

MR. LEONARD: Can we make an agreement that

22

the same stipulations would apply?

23

MS. GUERARD: Yes.

24

MR. LEONARD: Thank you.

25

MS. GUERARD: I don't have any objection to

1 Q What does -- ISP stands for internet service
2 provider?

3 A Yes.

4 Q What does Starnet provide to the EPV
5 subsidiaries?

6 A I believe that Starnet provided ISP services
7 to the EPV subsidiaries.

8 Q And did there come a time when you and
9 Mr. Hebard stopped doing business with Interlync and
10 began doing business with Starnet?

11 A I believe so.

12 Q And what was the reason that you stopped
13 doing business with Interlync?

14 A I believe their coverage wasn't very, very
15 robust.

16 Q You mean it wasn't as wide? They didn't have
17 as good -- many local dial-up numbers as Starnet?

18 A I believe so.

19 Q Is there any other reason that you switched
20 from Interlync to Starnet?

21 A I don't recall.

22 Q Did you see any invoices from Interlync?

23 A I don't recall.

24 Q Did Interlync charge the EPV subsidiaries for
25 the services that it provided to the EPV subsidiaries?

C E R T I F I C A T I O N O F R E P O R T E R

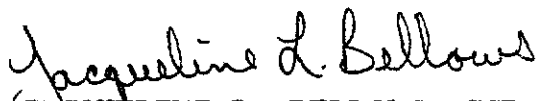
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CASE TITLE: FTC vs. Cyberspace.com, LLC, et al.

DATE: February 6, 2002

I HEREBY CERTIFY that the transcript
contained herein is a full and accurate transcript
of the notes taken by me at the deposition on the
above cause to the best of my knowledge and belief.

DATED: 2/20/02


(JACQUELINE L. BELLOWES, CCR

